No. _____

In the Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

EPIC GAMES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents two fundamental and recurring questions concerning the limits on the equitable authority of the federal courts:

1. Whether a court may hold a party in civil contempt based on a violation of an injunction's "spirit" where the injunction is silent as to the conduct upon which contempt is based, as the Ninth Circuit holds; or, instead, whether a court must ground a finding of civil contempt on the violation of an order that clearly and unambiguously proscribes the precise conduct at issue, as other circuits hold.

2. Whether the Ninth Circuit has properly created an "antitrust" or "competition" exception to *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and the longstanding equitable principles on which *CASA* rests, or otherwise disregarded *CASA*'s limits.

PARTIES TO THE PROCEEDING

Petitioner Apple Inc. (AAPL) was Defendant-Counter-Claimant - Appellant below.

Respondent Epic Games, Inc. was Plaintiff-Counter-Defendant - Appellee below.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Petitioner Apple Inc. (AAPL) states that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

The following cases are related to this proceeding under Rule 14.1(b)(iii):

- *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898 (N.D. Cal. Sept. 10, 2021) (No. 4:20-cv-05640-YGR)
- *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. April 24, 2023) (Nos. 21-16506, 21-16695)
- *Epic Games, Inc. v. Apple Inc.*, 144 S. Ct. 682 (cert. denied Jan. 16, 2024) (No. 23-337)
- *Apple Inc v. Epic Games, Inc.*, 144 S. Ct. 681 (cert. denied Jan. 16, 2024) (No. 23-344)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Apple Inc. (Apple) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals (App. 1a-49a) is published at 161 F.4th 1162. The court of appeals' denial of panel rehearing and rehearing en banc (App. 168a) is not reported. The decision of the district court (App. 50a-165a) is published at 781 F. Supp. 3d 943. The district court's permanent injunction (App. 166a-67a) is not reported.

JURISDICTION

The court of appeals entered its judgment on December 11, 2025 (App. 1a-49a). The court of appeals denied Apple's petition for panel rehearing and/or rehearing en banc on March 30, 2026. (App. 168a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

This case brought by Epic Games, Inc. (Epic) against Apple challenges the framework governing the global distribution of mobile applications—a multi-hundred-billion-dollar enterprise pioneered by Apple. The latest round of litigation concerns the district court's ruling holding Apple in civil contempt for charging a commission on so-called link-out purchases—purchases of digital goods through apps running on Apple's operating system and downloaded from the App Store, but which take place outside an app through a third-party. The Ninth Circuit recognized that the "text" of the district court's original injunction "does not address commissions at all." App. 34a n.9. But the court nevertheless affirmed the contempt finding based on circuit precedent, holding that "parties may be held in contempt for violating the spirit of an injunction." *Id.* at 12a (citation omitted).[1] The court then held that the district court properly enjoined Apple's conduct with respect to *all* registered worldwide developers on the App Store's U.S. storefront—literally millions—even though Epic alone pursued this case.

The Ninth Circuit's decision deepens a square conflict among the circuits regarding the proper standard for holding parties in civil contempt. Numerous circuits have held that a party may not be held in civil contempt for violating a court order unless the order "clearly and unambiguously" proscribes—within its "four corners"—"*the precise*

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[1] "ECF" refers to documents filed below in the Ninth Circuit, *Epic Games, Inc. v. Apple Inc.*, No. 25-2935. "Dkt." refers to documents filed below in the Northern District of California, *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640.

conduct on which the contempt allegation is based." *E.g.*, *United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005). By contrast, in the Ninth Circuit "parties may be held in contempt for violating the spirit of an injunction," App. 12a, even where, as here, an injunction is silent as to the particular conduct animating the contempt allegation, *see id.* at 34a n.9. Certiorari is warranted to resolve that clear circuit conflict over the standard for imposing civil contempt, which is outcome determinative here. The requirements for imposing the serious sanction of civil contempt should not vary by geography.

As this Court has long warned, "[t]he judicial contempt power is a potent weapon," one that can become "deadly" when it is stretched beyond the clear terms of injunctions. *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). That is why this Court has said that "principles of 'basic fairness requir[e] that those enjoined receive explicit notice' of 'what conduct is outlawed' before being held in civil contempt." *Taggart v. Lorenzen*, 587 U.S. 554, 557, 561 (2019) (alteration in original) (citation omitted). Federal Rule of Civil Procedure 65 reinforces this understanding by demanding specificity in injunctions to ensure clear notice. The Ninth Circuit's spirit-based inquiry is antithetical to these requirements. Under that rule, the potent weapon of contempt turns on an amorphous, know-it-when-you-see-it inquiry that permits a court to impose contempt merely by declaring a violation of an order's "spirit."

The Ninth Circuit's decision upholding the district court's universal injunction enjoining Apple's conduct as to *all* developers worldwide that distribute apps on the App Store's U.S. storefront also warrants review.

In *Trump v. CASA, Inc.*, this Court emphatically held that, outside the class action context, equitable relief generally must be limited to the parties before the Court. 606 U.S. 831, 842-43 (2025). Yet the injunction here enjoins Apple and the commissions it can charge with respect to millions of registered worldwide developers that are not parties to this case. It does so even though Epic never brought a class action and never attempted to show that enjoining Apple's conduct against all other developers—like Microsoft or Spotify, who have nothing to do with Epic—was somehow necessary to provide relief *to Epic*. Worse, the Ninth Circuit cemented an ill-conceived antitrust exception to *CASA* and then expanded it to include "incipient" antitrust violations based on *state* unfair competition law.

This case presents an ideal vehicle for the Court to address these important issues. Both questions presented were fully aired and squarely addressed by the panel decision. The Ninth Circuit's contempt ruling reaffirms and expands the Circuit's outlier rule that a party may be held in contempt based solely on violating the "spirit" of an order, even when it does not address the particular conduct at issue. That standard is unfounded and runs contrary to this Court's longstanding precedent. And the Ninth Circuit's ruling affirming the district court's universal injunction contravenes this Court's decision in *CASA* and creates an unwarranted exception to *CASA* for state-law antitrust and competition claims. Together, these rulings have combined to create an injunction that may reshape the global app marketplace.

Certiorari is warranted.[2]

STATEMENT OF THE CASE

A. Factual Background

1. Apple created the iPhone and iOS, the mobile operating system that makes the iPhone work. App. 2a. Apple also developed IP-protected tools, technologies, and services that enable developers to build mobile apps for iOS. *Id.* And Apple created the App Store, a two-sided marketplace with apps from millions of registered developers that use Apple's platform to reach iOS users around the world. *Id.*; *see Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 968 (9th Cir. 2023). Users can purchase all kinds of digital goods through apps downloaded from the App Store, and the marketplace is massive: Apple processes hundreds of billions of dollars in mobile app transactions every year.[3]

Registering as a developer on Apple's platform is inexpensive. Apple charges developers a modest $99 registration fee, which helps to prevent fraud. *Epic Games*, 67 F.4th at 968. But to compensate Apple for the enormous value it provides to developers and its investment in the tools and technologies necessary to operate the iOS system, Apple charges developers an

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[2] Justice Kagan denied Apple's application for a stay of the mandate in this case on May 6, 2026, which—in addition to the certiorari factors—required showing irreparable harm. But Apple and Epic have agreed to a schedule that will allow this petition to be considered at the Court's June 25 conference.

[3] *See* Apple, *App Store in the U.S. facilitated over $400 billion in developer billings and sales in 2024* (May 29, 2025, update), https://www.apple.com/newsroom/2025/05/app-store-in-the-us-facilitated-406-billion-usd-in-developer-billings-and-sales-in-2024/.

in-app commission on downloads of paid apps and on digital goods purchased in apps. *Id.* The commission rate for such in-app purchases typically ranges from 15-30%, with specific rates governing certain kinds of developers and certain kinds of digital transactions. *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 947 (N.D. Cal. Sept. 10, 2021); App. 111a. This structure has numerous benefits, including that it aligns Apple's incentives with developers' incentives, facilitates the entry of new apps, and supports smaller and less-profitable developers.

Developers that wish to distribute apps on the App Store gain enormous advantages—including access to Apple's technologies and vast user base—but they are subject to Apple's developer guidelines. *Epic Games, Inc.*, 559 F. Supp. 3d at 944-45. One guideline, Section 3.1.1, historically provided that "[a]pps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than" Apple's in-app payment system, known also as "IAP." *Id.* at 944 (emphasis and citation omitted). That provision is colloquially referred to as an "anti-steering" provision, because it prevents third-party developers from steering users to alternative purchasing mechanisms. *Id.*

So, under Apple's historical guidelines, a user who wished to purchase digital goods in an app had to use Apple's IAP, which protected Apple's ability to receive a commission for that purchase. *Id.* at 928-30, 944. Other platforms contain similar anti-steering provisions, and this Court has recognized that such rules can be procompetitive. *See Ohio v. American Express Co.*, 585 U.S. 529, 551 (2018). Apple historically has also prevented developers from

"encourag[ing] users to use a purchasing method other than in-app purchase" either "within the app or through communications sent to points of contact obtained from account registrations within the app (like email or text)." *Epic Games*, 559 F. Supp. 3d at 944-45, 1055 (citation omitted).

2. Epic is one of the largest mobile gaming developers in the world. *Epic Games*, 67 F.4th at 967-68; *Epic Games*, 559 F. Supp. 3d at 923-25. Like millions of other developers, Epic chose to make its apps available to users on iOS, thereby gaining access to Apple's technologies and user base. App. 2a-3a; *Epic Games*, 67 F.4th at 971-72; *Epic Games*, 559 F. Supp. 3d at 930-31. In addition to developing games like *Fortnite*, another Epic entity distributes apps through its operation of the Epic Games Store. Similar to Apple's App Store, the Epic Games Store is a two-sided marketplace where users can download games. *Epic Games*, 559 F. Supp. 3d at 931-33; App. 2a. At trial, the evidence showed that approximately 100 developers distribute apps through the Epic Games Store. *See* Trial Tr. 1220:18-20, Dkt. 620.

In 2019, a putative class of iOS developers filed a separate lawsuit against Apple alleging that Apple's distribution requirements and other requirements relating to IAP are anticompetitive. *See Cameron v. Apple Inc.*, No. 19-cv-3074 (N.D. Cal.) (*Cameron*). That class action settled, with no change to the developer provisions mentioned above concerning steering users to alternative payment methods. *See Cameron* Order (June 10, 2022), Dkt. No. 491. After a hearing, a district court found the *Cameron* settlement fair and entitled to effect.

B. Procedural Background

1. Epic filed this lawsuit against Apple in 2020, alleging that Apple's distribution and IAP requirements violated federal antitrust law and California's UCL. App. 3a; Complaint, Dkt. 1. Epic did not separately challenge Apple's anti-steering provision, but instead pointed to that provision as one of the ways in which Apple enforces its requirement that users make digital goods purchases using Apple's IAP. Complaint ¶¶ 129-34, 184-291. Epic—which effectively opted out of the then pending *Cameron* class action—chose to bring this case individually on its own behalf, and not as a class action.

The district court held a bench trial, at which Epic did not present any evidence regarding how the anti-steering provision affects its business or the business of Epic's subsidiaries. *Epic Games*, 559 F. Supp. 3d at 1055. Reasoning that Apple's business model has procompetitive benefits for developers, the district court held that Apple did not violate the federal antitrust laws. *Id.* at 921-22; App. 3a. It concluded, however, that Apple's anti-steering provision violated California's UCL by preventing developers from "communicating about lower prices on other platforms," which the court described as an "informational harm." *Epic Games*, 559 F. Supp. 3d at 993; *see* App. 34a n.9.

The district court granted what it called a "narrow remed[y]" and "limited measure" of "invalidating the offending [steering] provisions." *Epic Games*, 559 F. Supp. 3d at 1054, 1057. This translated into a 75-word order, the relevant provision of which stated:

> Apple Inc. and its officers, agents, servants, employees, and any person in active concert or

> participation with them ("Apple"), are hereby permanently restrained and enjoined from prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing . . . .

App. 166a.

The key language of this injunction—"including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing"—mirrors almost word-for-word the provision in Apple's developer guidelines that the district court identified as problematic. *See Epic Games*, 559 F. Supp. 3d at 944. The district court enjoined Apple from enforcing that provision with respect to *all* registered worldwide developers of apps on the App Store's U.S. storefront, and not just with respect to Epic. *Id.* at 1058; App. 59a.

2. Both parties appealed, and the Ninth Circuit stayed the injunction pending appeal. *Epic Games, Inc. v. Apple, Inc.*, Nos. 21-16506, 21-16696, 2021 WL 6755197, at *1 (9th Cir. Dec. 8, 2021). Following argument, the Ninth Circuit affirmed in relevant part. *Epic Games*, 67 F.4th at 973. Both parties sought certiorari in this Court, and the Court denied review. *See Apple Inc. v. Epic Games, Inc.*, No. 23-344 (petition denied Jan. 16, 2024); *Epic Games, Inc. v. Apple Inc.*, No. 23-337 (petition denied Jan. 16, 2024).

3. The day this Court denied review, Apple filed a notice of compliance with the district court. App. 65a; *see* Notice of Compliance with UCL Injunction, Dkt. 871. Apple explained that it no longer prohibits

developers from communicating with users via email or otherwise about alternative purchasing methods. Notice of Compliance with UCL Injunction 1. Apple likewise eliminated the requirement—set forth in Section 3.1.1 of its developer guidelines—prohibiting developers from including "buttons, external links, or other calls to action" directing users to alternative purchasing mechanisms besides Apple's IAP. *Id.* These actions directly responded to the district court's injunction against Apple's anti-steering rules. *Id.* at 2-3. As a result of these changes, Apple explained, developers can now communicate freely with users about alternative purchasing options. *Id.* at 15.

To ensure that Apple can continue to receive compensation for use of its IP-protected tools, technologies, and services—the very things that attract developers and enable app creation—Apple also implemented a commission between 12 and 27% on link-out purchases. Notice of Compliance with UCL Injunction 12; *see also* App. 65a. For example, if an app user wants to acquire a virtual costume (a "skin," in *Fortnite* parlance) for a virtual character, they can now use an external link to Epic's own purchasing system. But Epic cannot deliver that skin without the iPhone screen that displays it, the iPhone touch controls that direct the virtual character, the Apple silicon chip that processes all iOS software, the app development tools Epic used to build *Fortnite* for iOS, and the App Store platform that downloads, updates, and maintains the *Fortnite* app. *See Epic Games*, 559 F. Supp. 3d at 1038-40 (concluding that "Apple is entitled to license its intellectual property for a fee, and to guard its intellectual property from uncompensated use by others").

Epic believed that Apple's commission on link-out purchases was improper. But instead of moving to modify the injunction to address commissions, Epic moved to enforce the injunction through a finding of civil contempt. App. 66a-67a; *see* Mot. to Enforce Injunction, Dkt. 897. In Epic's view, Apple violated the injunction by charging a 27% commission on link-out purchases, even though the injunction does not mention commissions. *See* App. 19a-21a, 34a n.9.

Rather than look to whether the plain text of the injunction either allows or disallows a commission—or considering whether to modify the injunction prospectively—the district court launched a six-day evidentiary hearing to probe Apple's decisionmaking and subjective intentions regarding its compliance with the injunction. *Id.* at 7a; *id.* at 51a-52a, 66a-67a. Then, the court issued an order that, among other things, held Apple in civil contempt for failing to comply with the injunction and excoriated Apple for seeking to "evade the injunction's goals." *Id.* at 132a, 141a. As the district court saw it, although the injunction does not mention commissions or anything about Apple's compensation for link-out purchases, Apple nevertheless violated the "spirit" of the injunction by charging, in the district court's view, too high a commission. *See id.* at 129a-41a; *see also id.* at 12a. The court then permanently barred Apple from "[i]mposing any commission or any fee on purchases that consumers make outside an app." *Id.* at 159a.

4. The Ninth Circuit affirmed in part, reversed in part, and remanded. *Id.* at 48a-49a. As for the civil contempt finding, the court acknowledged that "the text of the [i]njunction does not address commissions at all." *Id.* at 34a n.9. But, following circuit precedent, the court held that "[p]arties may be held

in contempt for violating the spirit of an injunction." *Id.* at 12a. According to the Ninth Circuit, even though the injunction does not mention commissions, the injunction's "spirit" prevented Apple from charging what it called a "prohibitive commission[]." *Id.* at 34a n.9 (emphasis omitted). The Ninth Circuit also agreed with the district court that Apple acted in contempt by imposing certain design restrictions on the kinds of "buttons" and "calls to action" developers may include in their apps, some of which it claimed violated the "letter" of the injunction and others the "spirit." *Id.* at 22a-25a. And the Ninth Circuit further upheld the district court's findings that Apple had acted in "bad faith" by charging a commission on link-out purchases—findings that were tied to the premise that Apple had violated the spirit of the injunction. *Id.* at 14a-17a.

The Ninth Circuit reversed the district court's punitive zero-commission rule, but it left in place the underlying contempt finding as to the commission and remanded for proceedings to determine what Apple's commission rate should be. *Id.* at 25a-26a, 30a-34a. The court instructed the district court to set a new commission "as either a purgeable civil contempt sanction or properly tailored modification of the [i]njunction." *Id.* at 34a; *see also id.* at 35a, 49a. The court recognized that the injunction could bar only a "*prohibitive*" commission, but it nevertheless went on to discuss certain costs that Apple could recover, an issue that was neither briefed nor argued on appeal. *Id.* at 32a, 35a-36a.

Separately, the Ninth Circuit affirmed the universal scope of the injunction, which enjoins Apple's conduct with respect not only to Epic, but to all nonparty developers worldwide that distribute

apps in the United States, including those who settled separate class action claims against Apple. *See id.* at 45a-47a. Apple argued that this Court's decision in *CASA* prevents an injunction enjoining Apple's conduct with respect to nonparties. But the Ninth Circuit rejected that argument, reasoning that *CASA* has "no bearing" on antitrust injunctions and that "the scope of a permanent injunction following an incipient antitrust violation pursuant to" California's "UCL is . . . distinguishable from the injunction's scope in *CASA*." *Id.* at 47a (citing *Epic Games, Inc. v. Google LLC (In re Google Play Store Antitrust Litig.)*, 147 F.4th 917, 958 (9th Cir. 2025) ("[T]he scope of a permanent injunction following a finding of antitrust liability is hardly comparable to that of a preliminary injunction on a constitutional question."), *cert. dismissed*, 146 S. Ct. 1051 (2026)).

The Ninth Circuit held that Apple could be enjoined with respect to *all* developers, including those with no desire or intent to ever complete link-out purchases through Epic's own payment system. *Id.* at 46a-47a. Instead of requiring Epic to show that extending the injunction to millions of nonparties was necessary to provide "complete relief" to Epic—an issue on which the district court made no findings—the Ninth Circuit simply stated that it "agree[d]" with Epic's conclusory statements to that effect. *Id.* at 46a.

5. The Ninth Circuit stayed the mandate, but then reversed its own stay order. Order, ECF 192. Apple filed an application in this Court seeking a stay of the mandate. *See Apple Inc. v. Epic Games, Inc.*, No. 25A1213 (filed May 4, 2026). Justice Kagan denied that application on May 6, 2026.

REASONS FOR GRANTING THE WRIT

This Court's intervention is needed to address two important and recurring questions concerning the equitable authority of the federal courts. The first concerns the standard for assessing civil contempt—an issue on which the circuits are split. Numerous circuits hold that civil contempt is improper unless the terms of an order clearly and unambiguously condemn the precise conduct at issue. The Ninth Circuit, however, holds that parties can be held in contempt for violating the "spirit" of an injunction, even when, as here, the injunction is silent as to the particular conduct at issue. The second question concerns the limits on a court's authority to issue universal injunctions. In upholding the universal injunction in this case—which extends beyond Epic to *all* worldwide registered developers with apps on Apple's U.S. storefront—the Ninth Circuit reaffirmed and expanded its "antitrust exception" to *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and otherwise flouted the limits recognized in *CASA*. The court's decision all but renders *CASA* a dead letter in the nation's largest circuit. Certiorari is warranted.

I. THE FIRST QUESTION PRESENTED MERITS REVIEW

A. The Circuits Are Split On The Standard For Assessing Civil Contempt

The first question—concerning the standard for when a civil contempt finding may be imposed—directly implicates a clear circuit split.

1. The First, Second, Third, and Fifth Circuits confine the contempt inquiry to the four corners of the underlying order and require a court to find a

violation of an order's clear and unambiguous text before imposing a civil contempt sanction.

First Circuit. The First Circuit, for example, holds that "[t]he test is whether the putative contemnor is 'able to ascertain from the four corners of the order precisely what acts are forbidden.'" *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 76 (1st Cir. 2002) (quoting *Gilday v. Dubois*, 124 F.3d 277, 282 (1st Cir. 1997)). This limits the contempt inquiry "to an examination of th[e] document's text." *Id.* The result is that civil contempt sanctions cannot be imposed in the First Circuit unless "the *language* of the relevant court order" bars the alleged contemnor's conduct; the "effectiveness" of the injunction is not at issue. *Id.*

"The purpose" of the First Circuit's "'four corners' rule is to assist the potential contemnor by narrowly cabining the circumstances in which contempt may be found." *United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005). This requirement precludes finding contempt based on conduct as to which an order is silent: "The question is not whether the order is clearly worded as a general matter; instead, the 'clear and unambiguous' prong requires that the words of the court's order have clearly and unambiguously forbidden *the precise conduct on which the contempt allegation is based*." *Id.*

Second Circuit. The Second Circuit likewise limits the contempt inquiry to an order's text, holding that "the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden." *Drywall Tapers & Pointers of Greater N.Y. v. Local 530 of Operative Plasterers & Cement Masons Int'l Ass'n*, 889 F.2d 389, 395 (2d Cir. 1989). Echoing the First Circuit's rule, the "order the contemnor failed to comply with" must "leave[] 'no

uncertainty in the minds of those to whom it is addressed.'" *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995) (citation omitted).

Perez v. Danbury Hospital, 347 F.3d 419 (2d Cir. 2003), illustrates the point. There, a decree prevented the defendant, Danbury Hospital, from taking any "action, directly or indirectly, to limit, preclude or obstruct the plaintiffs," who were physicians, from "practicing neonatology at" the hospital. *Id.* at 422 (citation omitted). When certain obstetricians "continued to steer [other] obstetricians" away from the plaintiffs, the district court held the hospital in contempt because it "could have avoided this improper influence." *Id.* at 423. As the district court saw it, the hospital knew about the steering, yet it nevertheless charged the obstetricians with "obtaining patients' neonatologist designation," thereby undercutting the very purpose of the injunction. *Id.* The Second Circuit reversed, explaining that the district court did not "identify a *specific command*" that had been violated, and instead "appeared to rule in a vacuum and failed to evaluate whether the order was 'clear and unambiguous' *with reference to the conduct in question*." *Id.* at 424-25 (emphasis added). In the Second Circuit, in other words, contempt cannot lie for frustrating the "purposes" of an order through conduct as to which the order is "silent." *Id.*

Third Circuit. The Third Circuit squarely rejects the notion that a violation of a decree's "spirit" alone is enough to sustain a contempt sanction. *Harris v. City of Philadelphia*, 47 F.3d 1342, 1352 (3d Cir. 1995) (citation omitted). Like the First and Second Circuits, the Third Circuit stresses that "[s]pecificity in the terms of . . . decrees is a predicate to a finding of

contempt." *Id.* at 1349. Heeding this Court's precedents, the Third Circuit admonishes that "persons may not be placed at risk of contempt unless they have been given *specific notice* of the norm to which they must pattern their conduct." *Id.* (emphasis added). As a result, in the Third Circuit, "the order which is said to have been violated must be specific and definite," such that the alleged contemnor must have had "certainty as to what it prohibited or directed." *Eavenson, Auchmuty & Greenwald v. Holtzman*, 775 F.2d 535, 544 (3d Cir. 1985) (citation omitted). If it is "*at least arguable*" that the contemnor's conduct did not violate a decree, contempt is inappropriate. *Harris*, 47 F.3d at 1357 (Alito, J., concurring in part and dissenting in part); *id.* at 1358 (contempt inappropriate where "provision is at least ambiguous"); *id.* at 1359 (order must be "specific and definite").

Fifth Circuit. The Fifth Circuit also requires explicit notice before imposing contempt, even when the argument is that an alleged contemnor attempted an end-run around a prior court order. In *Hornbeck Offshore Services, L.L.C. v. Salazar*, for example, the district court enjoined enforcement of an offshore drilling moratorium imposed by the Department of the Interior. *See* 713 F.3d 787, 789 (5th Cir. 2013). The district court found the Department in contempt after it "immediately took steps to avoid the effect of the injunction" by introducing a new moratorium that was "the same 'in scope and substance'" as the enjoined moratorium. *Id.* at 789, 791. But the Fifth Circuit reversed, concluding that "none of those actions violated the court's order." *Id.* at 789.

Even crediting the district court's explanation that "Interior was intent on reinstating a moratorium that

imposed the same limitations as" the earlier directive "from the moment the court enjoined it," the Fifth Circuit held that "[n]either harboring that intent nor imposing a new moratorium . . . was a violation of the court order" itself. *Id.* at 794. Intent aside, the Department's "actions did not violate the injunction as drafted and reasonably interpreted." *Id.* at 795.

2. In stark contrast, the Ninth Circuit has adopted an atextual approach to assessing civil contempt that permits a contempt finding when a court believes a party has violated the "spirit" of a court order, even where—as here—the order is silent as to the conduct upon which the contempt allegation is based. App. 12a. The Ninth Circuit's "spirit" standard directly conflicts with the text-based approach applied by other circuits, and that conflict is outcome determinative here as to whether Apple was properly held in contempt for charging a commission.

The Ninth Circuit started down its "spirit" path in *Institute of Cetacean Research v. Sea Shepherd Conservation Society (Sea Shepherd)*, 774 F.3d 935, 954 (9th Cir. 2014). There, an order enjoined the defendants and "any party acting in concert with them . . . from physically attacking" whaling vessels or from coming within "500 yards" of such ships "on the open sea." *Id.* at 941 (quoting injunction). After receiving a copy of the injunction, the defendants transferred corporate assets and ownership to allow a (technically) different entity to engage in the same conduct. *See id.* at 941-42. The Ninth Circuit upheld a finding of civil contempt. *Id.* at 944. While the court might have confined its ruling to "aiding and abetting" cases, the court announced a broader rule: "'In deciding whether an injunction has been violated it is proper to observe the objects for which the relief

was granted and to find a breach of the decree *in a violation of the spirit of the injunction*, even though its strict letter may not have been disregarded.'" *Id.* at 949 (emphasis added) (citation omitted).

Here, in an opinion written by the author of *Sea Shepherd*, the Ninth Circuit expanded *Sea Shepherd*'s "spirit" rule. The Ninth Circuit began its contempt analysis with a heading and lengthy discussion titled, "**The Injunction's Spirit**," and clearly stated that "*Sea Shepherd* means what it says: parties may be held in contempt for violating the spirit of an injunction." App. 11a-12a. And while *Sea Shepherd* grounded its invocation of "'spirit'" to police the contemnor's "acts of assistance," 774 F.3d at 949 (citation omitted), making that case an "aiding and abetting case," App. 12a, the Ninth Circuit here fully embraced its "spirit" analysis outside the "aiding and abetting" context, *see id.* As the court explained, the Ninth Circuit's "spirit" rule applies when the "strict letter of the injunction [is] not violated," regardless of whether there is an "aiding and abetting" claim. *Id.*

The Ninth Circuit's "spirit" rule directly conflicts with the civil contempt standard adopted by the First, Second, Third, and Fifth Circuits. As explained, in those circuits, the contempt inquiry is confined to the four corners of the order at issue, and a civil contempt finding is improper unless the text of the order clearly and unambiguously prohibits the precise conduct at issue. As the Ninth Circuit itself acknowledged, here "the *text* of the [i]njunction does not address commissions at all." *Id.* at 34a n.9 (emphasis added). That is the end of the inquiry under the rule in the First, Second, Third, and Fifth Circuits. But the Ninth Circuit held Apple in contempt based on its

view that Apple nevertheless violated the injunction's "spirit." This conflict is outcome determinative here.

B. The Ninth Circuit's Decision Is Profoundly Wrong

The Ninth Circuit's "spirit" rule is wrong and conflicts with the basic principles undergirding contempt, this Court's caselaw, and Rule 65, while depriving parties of the clear notice that is required before imposing a civil contempt sanction.

1. Contempt is a "severe remedy" that not only subjects a litigant to opprobrium but can also carry with it severe monetary or other sanctions. *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019) (citation omitted). As this Court has warned, contempt also "uniquely is 'liable to abuse.'" *International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994) (citation omitted). That is because "civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Id.* This Court has recognized, therefore, that contempt is not just "a potent weapon" but "can be a deadly one" when parties lack fair notice of the particular conduct proscribed by a decree. *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). "[P]rinciples of 'basic fairness [thus] requir[e] that those enjoined receive explicit notice' of 'what conduct is outlawed' before being held in civil contempt." *Taggart*, 587 U.S. at 561 (second alteration in original) (citation omitted). The Ninth Circuit's "spirit" rule flouts these fundamental principles and is a recipe for abuse.

The Ninth Circuit's "spirit" rule also conflicts with Rule 65. That rule requires that an injunction "state

its terms specifically; and . . . describe in reasonable detail . . . the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B)-(C). This requirement is designed "to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). Courts assessing civil contempt should, therefore, "read court decrees to mean rather precisely what they say." *NBA Props., Inc. v. Gold*, 895 F.2d 30, 32 (1st Cir. 1990) (Breyer, J.). Rule 65 works hand-in-glove with the rule in the First, Second, Third, and Fifth Circuits, which is grounded on the specific terms of the injunction.

Where, as here, a court order is silent as to the particular conduct at issue, the serious remedy of civil contempt is inappropriate—just as the First, Second, Third, and Fifth Circuits have held.

2. The Ninth Circuit's reasoning is unpersuasive. The court quoted (at App. 11a) this Court's decision in *Terminal Railroad Association of St. Louis v. United States*, which explained that an injunction's terms should be "read in the light of the issues and the purpose for which the suit was brought," 266 U.S. 17, 29 (1924). But *Terminal Railroad* in no way holds that a court assessing civil contempt may find a party liable for what it deems, after the fact, to be the "spirit" of the order where an order is silent as to the conduct at issue. Such a post-hoc, know-it-when-you-see-it inquiry fails to provide clear notice of the conduct prohibited. *Taggart*, 587 U.S. at 561 (requiring "'explicit notice' of 'what conduct is outlawed'" (citation omitted)); *see Saccoccia*, 433 F.3d at 28 (requiring notice of the "*precise conduct on which the contempt allegation is based*").

Nor does this Court's decision in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949), support the Ninth Circuit's spirit-based approach. *Contra* App. 20a-21a, 25a n.5. As this Court made clear, *McComb* involved a violation of an injunction's express "terms." 336 U.S. at 192. This Court found that the injunction in *McComb*, "[b]y its terms," "enjoined *any* practices which were violations" of the Fair Labor Standards Act—which sets forth specific prohibitions—and cited the respondent's violations of the Act in holding it in contempt. *Id.* (emphasis added). *McComb* thus lends no support to the Ninth Circuit's free-floating "spirit" standard, which divorces the contempt inquiry from the order's text.

The Ninth Circuit observed that the injunction used the word "'prohibit,'" which, the court continued, "can be interpreted to mean '[t]o prevent, preclude, or severely hinder.'" App. 19a (alteration in original) (citation omitted). But the court overlooked the context in which that word was used. The injunction was specific about *what* was prohibited, stating that Apple may not "prohibit[] developers *from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to [external] purchasing mechanisms*." *Id.* at 166a (emphasis added). That prohibition said nothing about commissions, let alone unambiguously prohibit Apple from charging a commission—or any particular commission—as would be required to hold Apple in civil contempt in other circuits. *See supra* at 14-19.

Of course, nothing prohibits a district court from modifying and enlarging an injunction if new circumstances arise or it becomes clear that an existing order is insufficient to remedy a violation.

But a *prospective* modification of an order that gives a party clear notice of additional acts or conduct prohibited going forward is a far cry from a contempt sanction for violating the "spirit" of an order that never mentions the particular conduct at issue. A civil contempt ruling is a major development in any litigation and can negatively impact future orders.

Moreover, any modification must be tied to "preventing the evils aimed at" by the underlying order. *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). Here, as the Ninth Circuit stressed, the only harm found by the district court was an *informational* harm—"preventing informed choice among users of the iOS platform." App. 33a n.8 (citation omitted). Yet, after assessing Apple's conduct under a contempt framework instead of addressing a potential modification of the injunction, the district court made no effort to connect that informational harm to commissions.

Before an injunction may be modified, a party also must have "[t]he opportunity to present reasons . . . why proposed action should not be taken." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985); *see* Fed. R. Civ. P. 65(a)(1) (requiring notice). And a district court may not impose a modification retroactively simply by attaching a "modification" label to a civil contempt proceeding. *See FTC v. Trudeau*, 579 F.3d 754, 778 (7th Cir. 2009) (declining to treat a civil contempt order "as a *sua sponte* modification" of the court's prior decree).

Nor can the district court's contempt finding be sustained on account of Apple's supposed "bad faith." App. 14a-17a. Apple strenuously disagrees with the district court's findings that it acted in bad faith; faced with a vexing issue that could alter its business

model, Apple tried carefully to comply with the injunction while honoring its fiduciary duties in running a business. But the district court's bad faith analysis was driven by its improper focus on the "spirit," rather than the unambiguous terms of the order. This underscores the need for an objective, text-based standard for contempt, so that parties are given clear notice of what is, and is not, proscribed by an order. *E.g.*, *Hornbeck*, 713 F.3d at 794-95.

3. The Ninth Circuit's contempt finding as to the other supposed violations of the injunction also cannot stand under the clear-and-unambiguous standard applied by other circuits. Apple allowed developers to use what Apple has long called its "plain button" style in its developer guidelines, and Apple allowed developers to use particular templates for directing users to outside purchasing options. App. 22a-23a. The district court held Apple in contempt for requiring developers to use a particular kind of button style. Yet the original order did not specify, much less clearly and unambiguously state, that Apple was required to use only a *particular type* of "button." At a minimum, it was far from clear and unambiguous that Apple's design restrictions on particular *types* of buttons or templates violated the injunction—as would be required in the First, Second, Third, and Fifth Circuits before holding Apple in civil contempt.

In any event, the civil contempt sanction *as to the commission* is at the heart of this case and the principal issue on remand. If Apple did not act in contempt by imposing a commission (as would be true in the circuits that stick to the four corners of orders in weighing contempt), there is no basis for either the

district court or the Ninth Circuit to police Apple's commission rate using the civil contempt power.[4]

II. THE SECOND QUESTION PRESENTED MERITS REVIEW

A. The Ninth Circuit's Universal Injunction Ruling Flouts *Trump v. CASA*

The Ninth Circuit's ruling upholding the district court's universal injunction also warrants review.

1. In *CASA*, this Court clarified the limits on a federal court's authority to issue relief as to nonparties. As the Court explained, a federal court may enjoin conduct only with respect to "the plaintiffs in [a] lawsuit." 606 U.S. at 837. Although a court may award a plaintiff "'[c]omplete relief,'" such relief "is not synonymous with 'universal relief.'" *Id.* at 851. "Complete relief" instead refers only to relief "'*between the parties*.'" *Id.* (emphasis added) (quoting *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928) (emphasis added)). And *CASA* articulated important limits on the complete-relief principle: "Complete relief is not a guarantee" but is instead "the *maximum* a court can provide." *Id.* at 854 (emphasis added). As *CASA* holds, "the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be." *Id.* (quoting Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1797 (2022)). The Ninth

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[4] To be clear, the question in this case concerns the standard for civil contempt when a party is accused of violating a particular court order—the only charge against Apple here. This case does not concern a court's authority to maintain order in the courtroom or address broader threats to the integrity of the judicial process. *See Bagwell*, 512 U.S. at 832-33.

Circuit's decision flouts those fundamental principles and effectively renders *CASA* a dead letter.

2. The Ninth Circuit acknowledged *CASA*, but it then ignored *CASA*'s limits on the scope of equitable relief and doubled down on the circuit's creation of a wholesale "antitrust exception" to *CASA*. The Ninth Circuit's disregard for *CASA* is so fundamental—and so stark—that it warrants this Court's intervention.

First, while *CASA* makes clear that equitable relief ordinarily is available only "*between the parties*," 606 U.S. at 851 (citation omitted), the Ninth Circuit's injunction extends beyond Epic—the only plaintiff in this case—to all developers, of which there are literally millions. The injunction effectively affords Epic class-wide relief to the broadest possible class—*all* registered worldwide developers with apps on the App Store's U.S. storefront. But Epic did not seek to maintain a class action, much less satisfy Rule 23. Making matters worse, the *Cameron* plaintiffs—who, like Epic, challenged Apple's app distribution policies—reached a court-approved settlement that allowed them to communicate with users via email and otherwise about alternative purchasing mechanisms, but did not order the implementation of link-out purchases. By extending its injunction beyond Epic to *all* developers, the district court effectively granted "class relief" that even the *Cameron* class neither sought nor received.

Second, although *CASA* indicates that an injunction may incidentally benefit nonparties when necessary to grant complete relief to the plaintiff, the Ninth Circuit failed to explain why extending the injunction to all developers was necessary to afford complete relief to Epic, either as a developer of its own apps *or* as a distributor of other developers' apps on

its own game store. Such a universal injunction is plainly not necessary to achieve that result and provides Epic far *more* than complete relief.

In the prior appeal—which was decided before *CASA*—the Ninth Circuit reasoned that the district court appropriately enjoined Apple's conduct as to all developers because the injunction was "tied to Epic's injuries" as a distributor via the Epic Games Store—rather than as a developer—of mobile apps. *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 1003 (9th Cir. 2023). The court reasoned that Apple's anti-steering provision "prevent[ed] other apps' users from becoming would-be *Epic Games Store* consumers." *Id.* (emphasis added). That is, the guidelines prevented other developers from using the Epic Games Store. *See Epic Games, Inc. v. Apple, Inc.*, 73 F.4th 785, 787 (9th Cir. 2023) (M. Smith, J., concurring in the granting of the motion for a stay of the mandate pending the filing of a petition for certiorari). Because Epic distributes apps through its own independent marketplace, the Ninth Circuit reasoned that Apple could be enjoined with respect to developers who wished to send users to the Epic Games Store to complete purchases of digital goods.

As Apple explained, even assuming that Epic benefits as an app *distributor* when other apps' users make purchases via the Epic Games Store, that in no way justifies enjoining Apple with respect to *all* developers, regardless of whether they will ever seek to link out *to purchases on the Epic Games Store*. *See* App. 46a. For instance, if Spotify includes a link to Spotify's own external payment system in its iOS app, that in no way benefits *Epic*. Spotify's external link-out in fact has nothing to do with Epic. The same is true when Microsoft implements link-outs to the

Microsoft Games Store. Providing relief to nonparty Microsoft by requiring Apple to allow developers to link out to the Microsoft Games Store—a marketplace that competes against the Epic Games Store, *see Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 996 (N.D. Cal. 2021)—can only *hurt* Epic.

The Ninth Circuit did not address these arguments. Instead, it held without explanation that the injunction properly enjoins Apple's conduct with respect to all developers, regardless of whether they "link[] out to the Epic Games Store." App. 46a. There is no basis for enjoining Apple's conduct with respect to even those developers that do not wish to link out to the Epic Games Store, and the injunction therefore goes far beyond providing Epic the "maximum" remedy of complete relief. *CASA*, 606 U.S. at 854. This distinction has huge practical implications because, as noted, the only evidence in the record suggests that only about 100 developers used the Epic Games Store at the time of trial. Yet the injunction applies to *millions* of developers worldwide that distribute apps on the App Store's U.S. storefront.

On appeal, Epic introduced a new argument: that a universal injunction was necessary to foster competition over commission rates generally. Epic, in other words, sought to defend the scope of the injunction based on alleged harms it experiences as an app *developer*. But, as noted, the courts rejected Epic's antitrust claim in the original proceeding. Epic prevailed only on its UCL claim, which, as the Ninth Circuit recognized, was based on an "*informational* harm"—"'preventing informed choice among users of the iOS platform.'" App. 33a n.8, 34a n.9 (emphasis added) (citation omitted). And, as the Ninth Circuit itself recognized, any injunction must be

"tailor[ed] . . . to the underlying UCL violation." *Id.* at 34a n.9. Epic's newfound contention cannot be squared with the UCL's focus on bolstering information for consumers, and Epic has not and cannot explain why enjoining millions of nonparties is necessary to remedy the specific informational harm *to Epic* from Apple's prior bar on link-out purchases.

Third, the Ninth Circuit disregarded *CASA*'s teachings that "[c]omplete relief is not a guarantee" but is instead "the *maximum* a court can provide," and that "'the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be.'" 606 U.S. at 853-54 (emphasis added) (citation omitted). The Ninth Circuit did not hold Epic to that standard. Instead, the court simply recited Epic's argument—devoid of any record citation or support (because there is none)—that "limiting" the scope of the injunction to "only gaming apps that seek to implement links out to the Epic Games Store . . . would not facilitate the competition necessary to grant Epic complete relief." App. 46a. And without offering any reasoning, the Ninth Circuit stated that it "agree[d] with Epic on this question." *Id.*

The Ninth Circuit's conclusory treatment of the critical "[c]omplete relief" question defies this Court's admonition that "'the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be,'" *CASA*, 606 U.S. at 854 (citation omitted), and renders *CASA*'s limits meaningless.

B. The Ninth Circuit's "Antitrust Exception" To *CASA* Is Unfounded

The Ninth Circuit made matters worse by entrenching, and expanding, a newly created "antitrust exception" to *CASA*.

In *Epic Games, Inc. v. Google LLC (In re Google Play Store Antitrust Litigation),* the Ninth Circuit held that "*CASA*'s holding about district courts' authority under the Judiciary Act of 1789 has no bearing on whether [a] district court . . . exceed[s] its equitable powers under Section 16 of the Clayton Act." App. 47a (quoting *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 958 (9th Cir. 2025), *cert. dismissed*, 146 S. Ct. 1051 (2026)). That exception cannot be squared with *CASA*. *CASA* explained that "[t]he Judiciary Act of 1789 . . . 'is what authorizes federal courts to issue equitable remedies,'" and that "statutory grant encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." 606 U.S. at 841 (citations omitted). Nothing in Section 16 of the Clayton Act authorizes a departure from "traditional principles of equity." *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 130 (1969). To the contrary, Section 16 allows private parties to obtain relief "when and under the same conditions and principles as injunctive relief . . . granted by courts of equity, under the rules governing such proceedings," 15 U.S.C. § 26.

Moreover, this Court has explained that "the granting of injunctive relief under [Section] 16 is by the terms of that section limited to the same conditions and principles employed by courts of equity, and by the rules governing such proceedings." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 631-32 (1977); *see also id.* at 644 (Blackmun, J., concurring in the result) (reasoning that Section 16 injunctions must hew to "all the traditional prerequisites for equitable relief"). The Ninth Circuit's antitrust exception to *CASA* is, therefore, entirely unfounded.

But the decision below is even more extreme. As the Ninth Circuit itself recognized, "there is no antitrust liability" here. App. 47a. Both the district court and Ninth Circuit in the prior appeal *rejected* Epic's federal antitrust claim. Epic prevailed only on its California UCL claim. *Supra* at 8. So the Ninth Circuit below extended *Google*'s errant reasoning to cases involving what it called "incipient" antitrust violations—under *state law*. App. 47a. That is doubly wrong. First, as noted, private antitrust remedies are subject to the same equitable limits as apply in other cases. Second, state law cannot possibly expand a federal court's equitable authority. "Equitable relief in a federal court" is limited by "the traditional scope of equity as historically evolved in the English Court of Chancery," and the fact that "a State may authorize its courts to give equitable relief unhampered by any or all such restrictions cannot remove these fetters from the federal courts." *Guaranty Tr. Co. of N.Y. v. York*, 326 U.S. 99, 105-06 (1945).

In its prior certiorari petition, Apple argued that the universal injunction in this case violated the limits on federal courts' equitable powers. Although that petition was denied, the Court subsequently decided *CASA* and confirmed the problems with the scope of the universal injunction in this case. Yet, in this appeal, the Ninth Circuit simply disregarded *CASA*'s limits to reaffirm the injunction's improper universal scope. Left undisturbed, the Ninth Circuit's opinion in this case, coupled with the antitrust exception created in *Google*, threatens to reincarnate the universal injunction in the nation's largest circuit, creating a magnet for forum shopping.

III. THIS CASE IS AN EXCELLENT VEHICLE TO ADDRESS THESE IMPORTANT ISSUES

This case presents the Court with an ideal vehicle to address both questions presented.

As to civil contempt, the parties fully aired the question presented before the Ninth Circuit and the court's decision squarely holds that "parties may be held in contempt for violating the spirit of an injunction." App. 12a. Moreover, the resolution of the question in Apple's favor would require reversal of the critical contempt finding as to commissions, given the panel's acknowledgment that the injunction's "text" was entirely silent as to commissions. *Id.* at 34a n.9. Civil contempt frequently arises in the federal courts, and the standard for contempt should not depend on whether a suit is filed in California or Texas. This Court should intervene to settle the split among the circuits concerning whether contempt can be premised on the mere violation of an order's spirit.

Nor should the Ninth Circuit's remand for further proceedings insulate its erroneous civil contempt rule from review. The threshold question is whether Apple can be held in contempt based on its commission. If the answer is no (as it plainly is under the "four corners" rule), then there is no need, or basis, for any remand on the commission issue.

It is no answer to say that the district court could modify the injunction to address the commission rate. Modification has its own requirements. *See supra* at 22-23. But more important, there is a vast difference between holding Apple in contempt for charging a commission, and prospectively modifying the injunction to address commissions. A contempt finding stamps the purported contemnor with a

"stigma," *Reich v. Sea Sprite Boat Co.*, 64 F.3d 332, 334 (7th Cir. 1995) (Easterbrook, J.), and the contempt finding here threatens to prejudice this next phase of litigation, *see Bagwell*, 512 U.S. at 831 ("[C]ivil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct."). As this case underscores, a contempt finding can change everything.

As to the scope of the injunction, that question is also squarely presented and exceptionally important. This Court's watershed decision in *CASA* clarified bedrock limits on the equitable authority of federal courts. But the Ninth Circuit flouted *CASA* twice over. By carving out an exception to *CASA* based on *state*-law incipient antitrust violations, *see* App. 47a, the decision below unleashes universal injunctions by another name. And by failing to even minimally scrutinize Epic's suspect claim that enjoining millions of nonparties is somehow necessary to provide Epic complete relief, *see id.*, the Ninth Circuit ignored this Court's clear holdings that complete relief is the "maximum" a court can afford, and that the greater the relief sought the greater the justification required, *CASA*, 606 U.S. at 854. Allowing the Ninth Circuit's decision to stand would effectively nullify *CASA* in the nation's largest circuit.

The importance of the questions presented is also beyond question. The standard for assessing civil contempt concerns the ability of federal courts to wield their enforcement powers and the notice to which parties are entitled before being held in contempt. Likewise, the requirements for imposing a universal injunction are also a matter of grave importance, as *CASA* itself confirms. This case

illustrates how these issues matter: As a result of the district court's finding that Apple acted in contempt by charging its commission on link-out purchases and its universal injunction to remedy that violation, this litigation—brought by a single party—stands to reshape the global marketplace for apps and related goods, a multi-billion-dollar marketplace.

This Court's review is warranted.[5]

CONCLUSION

The petition for a writ of certiorari should be granted.

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[5] Given the highly expedited schedule for certiorari briefing, amicus participation in this Court is impractical for virtually all potential amici. Nevertheless, the extensive amicus participation in the Ninth Circuit underscores the exceptional importance of both questions presented.

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[161 F.4th 1162]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EPIC GAMES, INC., Plaintiff-ctr-defendant - Appellee,

v.

APPLE INC., Defendant-ctr-claimant - Appellant.

No. 25-2935

Argued and Submitted October 21, 2025
San Francisco, California

Filed December 11, 2025

Before: SIDNEY R. THOMAS and MILAN D. SMITH, JR., Circuit Judges, and MICHAEL J. MCSHANE, Chief District Judge.*

OPINION

M. SMITH, Circuit Judge:

Plaintiff-Appellee Epic Games, Inc. (Epic) sued Defendant-Appellant Apple, Inc. (Apple) for alleged antitrust violations related to Apple's App Store. After a bench trial, the district court enjoined Apple from certain anticompetitive business practices. Namely, Apple could not prohibit App Store developers from using buttons, links, or other calls to action to encourage customers to make purchases

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* The Honorable Michael J. McShane, United States Chief District Judge for the District of Oregon, sitting by designation.

from the developers rather than Apple. We affirmed. Apple claimed to comply with the injunction, but it instead prohibited developers from using buttons, links, and other calls to action without paying a prohibitive commission to Apple, and it restricted the design of the developers' links to make it difficult for customers to use them.

The district court found Apple in contempt, and it issued an order to address Apple's violations of the injunction. We affirm the district court's contempt findings. We reverse and remand in part the district court's imposition of civil contempt sanctions, but we otherwise affirm that order. Separate from the contempt issues, Apple urges us to vacate the injunction, citing new cases from the California Court of Appeal and the U.S. Supreme Court. We reject its arguments. We also reject its request for a new district judge on remand.

FACTS AND PRIOR PROCEEDINGS

Epic develops video games, most notably *Fortnite*. It also runs the online Epic Games Store to distribute its own apps and apps belonging to other companies.

Apple developed the iPhone and iPad; the operating system, iOS; and the App Store. Apple licenses its intellectual property to developers (like Epic) so they can build iOS software applications (apps) and distribute them through the App Store. Developers can earn money off their apps using the In-App Purchase (IAP) system. With IAP, users can buy digital goods and services from developers in the App Store, and in doing so, users pay Apple, which

remits 70% to the developers and keeps 30% for itself as a commission.[1]

Five years ago, Epic sued Apple, alleging claims pursuant to the Sherman Act, in addition to California's Cartwright Act and California's Unfair Competition Law (UCL). Epic alleged that Apple could not require developers like itself to use Apple's IAP for purchases of digital products within iOS apps. Epic also alleged that Apple could not ban developers from using "buttons, external links, or other calls to action [to] direct customers to purchasing mechanisms other than" IAP, which could allow them to avoid Apple's commission.

After a bench trial, the district court reached a mixed result. It found in Apple's favor with respect to the IAP requirement for purchases within iOS apps but in Epic's favor with respect to Apple's ban on developers directing customers to non-IAP purchasing mechanisms (*i.e.*, Apple's "anti-steering" provisions). *See Epic Games, Inc. v. Apple Inc.* (*Epic I*), 559 F. Supp. 3d 898, 1052–57, 1068–69 (N.D. Cal. 2021). It dismissed the antitrust claims but concluded that Apple's anti-steering provisions violated the UCL by "'threaten[ing] an incipient violation of an antitrust law' by preventing informed choice among users of the iOS platform." *Id.* at 1055 (quoting *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187, 83 Cal.Rptr.2d 548, 973 P.2d 527 (1999)). The district court explained its findings in a written order.

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[1] Users can also purchase physical goods from developers using IAP, although only digital goods and services are at issue here. There is no commission on purchases of physical goods.

Based on those findings, the district court, in relevant part, "permanently restrained and enjoined" Apple "from prohibiting developers from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to [IAP]." This was memorialized in a separate document (the Injunction).

Both parties appealed to us, and we affirmed in part, reversed in part, and remanded. *See Epic Games, Inc. v. Apple, Inc.* (*Epic II*), 67 F.4th 946, 973 (9th Cir. 2023), *cert. denied*, —— U.S. ——, 144 S. Ct. 681–82, 217 L.Ed.2d 382 (2024). In particular, we affirmed the Injunction. *Id.* at 1002.

Prior to the Injunction, purchases made off the Apple platform (linked-out purchases) were not subject to a commission because Apple did not allow for such purchases. However, while appealing the Injunction, Apple contemplated whether to charge a commission on those purchases, given the Injunction requires Apple to allow for these transactions they had previously banned.

In May 2023, after our court ruled on the appeal, Apple examined two proposals. With Proposal 1, Apple would charge no commission but would restrict what links could say, what they could look like, and where they could be located. With Proposal 2, Apple would lift most of those restrictions but charge a 27% commission on linked-out purchases. Apple studied the potential revenue consequences of both proposals and eventually decided that it would combine the commission from Proposal 2 with the restrictions from Proposal 1.

In conceiving the 27% commission, Apple took the 30% commission for the purchases through IAP and applied a "cost of payments discount" of 3%.[2] Importantly, however, Apple believed that the 3% discount was too small to lead to meaningful "developer adoption of link-out." In a linked-out purchase, developers would pay more than 30% because they would pay 27% commission to Apple plus more than 3% to cover the external costs of processing payments. In a transaction using IAP, developers would pay only Apple's 30% commission.

Apple also studied the effects of its link restrictions. It found that "when a link-out happens, there will be some breakage," meaning a fraction of "customer[s] [will] drop[ ] off during the buy-flow process due to a less seamless experience" on the developer's site compared to Apple's IAP. Apple calculated that, if it could push breakage above a certain percentage, "developers reach a tipping point where they [would] lose more on linking out than they would make sticking with Apple [I]AP and [paying] the higher commission."

Based on these analyses, Apple decided it would adopt certain restrictions on external links, which were incorporated into Apple's "Link Entitlement" program. Such restrictions included:

1. External payment links had to follow the so-called "Plain Button style," meaning the link could not be enclosed in a visible shape. The link could be enclosed in a shape, but it would not be visible because "[t]he background

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[2] The 27% commission would be applied to purchases made for a period of seven days after the consumer followed the link out of the app.

surrounding the text must match the background of [the] app's page."

2. External payment links had to follow one of five templates and could not say anything else.
3. External payment links could not "be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using" IAP.
4. Each time a user clicked an external payment link, the user would be presented with a warning that they were "about to go to an external website"; that Apple was "not responsible for the privacy or security of purchases made on the web"; that "[a]ny accounts or purchases made" using the link would "be managed by the developer"; that the user's "App Store account, stored payment method, and related features, such as subscription management and refund requests" would not be available; and that Apple could not "verify any pricing or promotions offered by the developer."
5. External payment links had to be static, not dynamic, meaning the link could not identify the user or automatically log that user into their account after clicking the link.
6. External payment links could not be used by participants in Apple's Video Partner Program (VPP) or News Partner Program (NPP).
7. External payment must "[b]e displayed no more than once in app, on no more than one app page the user navigates to . . . in a single, dedicated location on such page, and may not persist beyond that page[.]"

We will generally refer to these restrictions as "link design restrictions," despite the fact that they restrict more than link design. In its App Review Guidelines, Apple determined that developers would be required to participate in the program if they intended "to include a link to the developer's website that informs users of other ways to purchase digital goods or services."

Apple put its plan (27% commission and Link Entitlement program) into action several months after our court issued its decision affirming the Injunction. The Supreme Court denied Apple's certiorari petition on January 16, 2024, *see Apple Inc. v. Epic Games, Inc.*, —— U.S. ——, 144 S. Ct. 681, 217 L.Ed.2d 382 (2024), and the plan went into effect later that same day. Apple filed a Notice of Compliance with the district court, which "summarize[d]" the changes that it made to comply with the Injunction. The Injunction went into effect the next day.

Two months later, Epic moved to enforce the Injunction, contending Apple was not in compliance. The district court then set an evidentiary hearing for May 2024. That hearing lasted six court days and involved testimony from seven witnesses. The district court "became increasingly concerned that Apple was not only withholding critical information about its business decision for complying with the Injunction, but also that it had likely presented a reverse-engineered, litigation-ready justification for actions which on their face looked to be anticompetitive."

In light of its concerns, the district court "ordered the production of all Apple's documents relat[ed] to the decision-making process leading to the link entitlement program and associated commission rates." Apple asserted privilege over many of those

documents, but most of its privilege claims were eventually withdrawn or rejected. In September 2024, Apple filed a motion for relief from the Injunction pursuant to Fed. R. Civ. P. 60(b). After Apple's document production concluded, the evidentiary hearing resumed in February 2025. The second hearing lasted three days and involved testimony from five witnesses.

On April 30, 2025, the district court issued an omnibus order (the April 30 Order). *See Epic Games, Inc. v. Apple Inc.* (*Epic III*), 781 F. Supp. 3d 943 (N.D. Cal. 2025). It denied Apple's motion to set aside the Injunction. *See id.* at 983–89. It granted Epic's motion to enforce the Injunction and held Apple in civil contempt for noncompliance with the Injunction. *See id.* at 989–95. The district court noted that as of the May 2024 hearing, Apple provided no evidence of developer adoption rates, with no evidence that any large developer was willing to comply with Apple's conditions to offer linked-out purchases. *See id.* at 982 & n.50. It permanently enjoined Apple from:

1. Imposing any commission or any fee on purchases that consumers make outside an app, and as a consequence thereof, no reason exists to audit, monitor, track or require developers to report purchases or any other activity that consumers make outside an app;
2. Restricting or conditioning developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app;
3. Prohibiting or limiting the use of buttons or other calls to action, or otherwise conditioning the content, style, language, formatting, flow

or placement of these devices for purchases outside an app;

4. Excluding certain categories of apps and developers from obtaining link access;
5. Interfering with consumers' choice to proceed in or out of an app by using anything other than a neutral message apprising users that they are going to a third party-site; and
6. Restricting a developer's use of dynamic links that bring consumers to a specific product page in a logged-in state rather than to a statically defined page, including restricting apps from passing on product details, user details or other information that refers to the user intending to make a purchase.

Id. at 1003–04 (footnote omitted). The district court also resolved some outstanding privilege disputes and other issues. *See id.* at 995–1002. Finally, it referred Apple and one of its officers for criminal investigation. *See id.* at 1005. Apple timely appeals from the April 30 Order.

STANDARD OF REVIEW

"This court reviews a district court's contempt finding and imposition of sanctions for abuse of discretion." *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992), *as amended on denial of reh'g* (Aug. 25, 1992). However, "[w]e review a district court's factual findings in connection with a contempt order for clear error." *Coleman v. Newsom*, 131 F.4th 948, 956 (9th Cir. 2025). Our court has been less than clear about the standard of review applicable to privilege calls. *See Greer v. Cnty. of San Diego*, 127 F.4th 1216, 1222 (9th Cir. 2025). Because we would affirm the district court's privilege analysis

regardless of the standard of review, we will not resolve the apparent intra-circuit split over the correct standard of review. Finally, we review "the denial of a Rule 60(b) motion for relief from judgment" "for abuse of discretion." *Marroquin v. City of Los Angeles*, 112 F.4th 1204, 1211 (9th Cir. 2024).

ANALYSIS

The district court found Apple in contempt for violating the Injunction, and in the April 30 Order, it issued specific restraints on Apple's conduct pursuant to the Injunction. The district court did not abuse its discretion by finding Apple in contempt. The district court's restrictions in the April 30 Order are affirmed in part and reversed and remanded in part. Despite Apple's arguments to the contrary, most of the restrictions imposed by the district court align with the Injunction, although they are overbroad in some respects. However, the commission prohibition is not an appropriately cabined civil contempt sanction. Accordingly, the April 30 Order is reversed in relevant part and remanded to the district court. We otherwise affirm the April 30 Order.

Separately, Apple contends that the Injunction must be vacated in light of recent authority from the California Court of Appeal and the U.S. Supreme Court. These arguments lack merit. We also reject Apple's request that a different district judge be assigned to the case on remand.

I. Jurisdiction

According to Apple, we have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. Apple explains that the April 30 Order is a final order for the purposes of § 1291 that disposes of the post-judgment contempt proceeding and Apple's motion to set aside

the judgment. Epic does not disagree. We conclude that we have jurisdiction over this appeal because the Injunction and April 30 Order were drafted as final orders, despite our remand in part of the April 30 Order to clarify some of its provisions, as detailed below. The outcome of the appeal does not change our jurisdictional status.

II. The District Court's Contempt Findings and Analysis

Apple makes three methodological challenges to the district court's contempt analysis. It contends that the district court improperly: (i) relied on the Injunction's spirit; (ii) considered evidence of Apple's bad faith; and (iii) considered privileged material in making its rulings. Each methodological challenge fails, and we affirm the contempt findings on the merits. The district court did not abuse its discretion by finding Apple in contempt.

A. The Injunction's Spirit

"Civil contempt . . . consists of a party's disobedience to a specific and definite order by failure to take all reasonable steps within the party's power to comply." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). "In contempt proceedings[,] . . . a decree will not be expanded by implication or intendment beyond the meaning of its terms," but those terms must be "read in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n of St. Louis v. United States*, 266 U.S. 17, 29, 45 S.Ct. 5, 69 L.Ed. 150 (1924).

In *Institute of Cetacean Research v. Sea Shepherd Conservation Society* (*Sea Shepherd*), 774 F.3d 935 (9th Cir. 2014), we determined that because "it is

proper to observe the objects for which the relief was granted," courts can "find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded." *Id.* at 949 (quoting *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942)).

Thus, pursuant to *Sea Shepherd*, the district court did not err in concluding that courts "look to the spirit of the injunction when a litigant applies a dubiously literal interpretation of the injunction, particularly where that interpretation is designed to evade the injunction's goals." *Epic III*, 781 F. Supp. 3d at 990–91. Apple resists this conclusion, arguing that *Sea Shepherd* "does not apply when . . . the injunction's plain terms do not proscribe the conduct at issue, and there is no contention of aiding and abetting." The first argument fails because, in the above-quoted part of *Sea Shepherd*, we assumed that the strict letter of the injunction was not violated. *See Sea Shepherd*, 774 F.3d at 949. The second argument fails because, although *Sea Shepherd* was an aiding-and-abetting case, the above-quoted portion says nothing about aiding and abetting. Indeed, courts must prevent defendants from evading injunctions even when they have not enlisted an aider or abettor. In short, *Sea Shepherd* means what it says: parties may be held in contempt for violating the spirit of an injunction.

Sea Shepard's holding makes practical sense. Were "narrow literalism . . . the rule of interpretation, injunctions w[ould] spring loopholes, and parties in whose favor injunctions run w[ould] be inundating courts with requests for modification in an effort to plug the loopholes." *Schering Corp. v. Ill. Antibiotics Co.*, 62 F.3d 903, 906 (7th Cir. 1995) (internal citations omitted).

Next, Apple argues that the district court violated Fed. R. Civ. P. 65(d)(1). Pursuant to that rule, "[e]very order granting an injunction . . . must . . . state its terms specifically; and . . . describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B), (C). The district court complied with this rule. The Injunction was filed as a separate docket entry, and it does not reference another document, including the district court's opinion evaluating liability. Instead, it merely notes that the Injunction is "consistent with its findings of fact and conclusions of law." The Injunction also stated its terms specifically and in reasonable detail: it enjoined Apple, in relevant part, "from prohibiting developers from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing." It did not exhaustively enumerate the ways that Apple might design the App Store to prohibit those calls to action, but Rule 65 does not require it to do so.

Apple's position also breaks down because Rule 65(d) regulates only the "contents and scope of every injunction and restraining order." Fed. R. Civ. P. 65(d) (citation modified). It does not purport to limit what materials courts may consider during contempt proceedings to interpret the plain terms of the Injunction. In fact, it says nothing about contempt. Even if district courts holding contempt proceedings could consider only the materials identified in Rule 65, that would make no difference here. Rule 65 applies to "orders granting injunctions," not just the injunctions themselves.

B. Apple's Bad Faith

Apple first disputes that its bad faith was legally relevant to the court's contempt determination and then argues that the district court erred by finding that it acted in bad faith. The district court did not err in deciding that it could consider evidence of Apple's bad faith, nor did it clearly err in finding that Apple acted in bad faith.

Beginning with the first challenge, Apple cannot obtain reversal because "[t]he doctrine of invited error prevents a defendant from complaining of an error that was his own fault." *United States v. Magdaleno*, 43 F.4th 1215, 1219 (9th Cir. 2022) (quoting *United States v. Myers*, 804 F.3d 1246, 1254 (9th Cir. 2015)). In opposing Epic's motion to enforce the Injunction, Apple argued that Epic was required to prove "that Apple did not make good-faith efforts to substantially comply with the Injunction," arguing that "Epic ha[d] not adduced any relevant evidence to that effect" and "the undisputed evidence establishe[d] Apple's good-faith compliance with the Injunction." Having put its good faith at issue, it cannot fault the district court for considering it.

Even if Apple had preserved the point, there was no error. The standard for evaluating contempt "is generally an *objective* one," in that "a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable." *Taggart v. Lorenzen*, 587 U.S. 554, 561, 139 S.Ct. 1795, 204 L.Ed.2d 129 (2019) (emphasis in original). However, there is a "narrow" exception: a party should not be held in contempt if "[their] action appears to be based on a good faith and reasonable interpretation of (the

court's order)." *Sea Shepherd*, 774 F.3d at 953 (quoting *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982)). Because this exception rises and falls on an objective inquiry (*i.e.*, whether a defendant's interpretation is "reasonable"), the exception is not helpful for Apple, which based its conduct on an objectively unreasonable interpretation of the Injunction. *See id.* That being said, the exception shows that good faith can be relevant to a court's contempt evaluation, refuting Apple's argument that its "subjective motivations ha[ve] no bearing on whether Apple can be held in civil contempt."

Good faith, when coupled with an objectively reasonable interpretation of a court's order, can be enough to avoid a contempt finding. Here, even assuming that Apple's interpretation of the Injunction is reasonable (it is not), evidence of Apple's bad faith negates a good-faith defense. In any case, the Supreme Court has acknowledged that "civil contempt sanctions may be warranted when a party acts in bad faith." *Taggart*, 587 U.S. at 561–62, 139 S.Ct. 1795.

Apple offers three reasons that the district court clearly erred in its April 30 Order in finding that Apple acted in bad faith, "unfairly impugn[ing] its motives when responding to the original injunction." None of them is persuasive.

First, the district court noted that Apple "hid its decision-making process from the Court," *Epic III*, 781 F. Supp. 3d at 960, but Apple argues that it filed a "transparent 'Notice of Compliance'" about its compliance plans. Apple further argues that it was not required to provide additional details about its compliance plan because Epic did not seek discovery

prior to the first evidentiary hearing. However, as Epic counters, Apple has ignored the district court's finding that Apple "attempted to mislead" in its Notice of Compliance and May 2024 hearing with "pretextual" justifications. *See Epic III*, 781 F. Supp. 3d at 971–72.

Second, the district court noted that, "[u]ltimately, Apple's 2024 response to the Injunction was the most anticompetitive option" among those options that Apple considered. *Id.* at 962. Apple argues that the district court "penalized Apple for choosing what [it] understood to be the most advantageous option for its business and shareholders," which is not evidence of bad faith. But the district court did not find Apple in contempt because it picked the most advantageous of several purportedly compliant options. Instead, it found that "at every step Apple considered whether its actions would comply, and at every step Apple chose to maintain its anticompetitive revenue stream over compliance." *Epic III*, 781 F. Supp. 3d at 992. It also found that Apple "opted to construct a program that nullified the revenue impact of the Injunction by prohibiting any viable alternative." *Id.* at 991.

Third, the district court found that the Analysis Group's "recommendation of a commission rate on link-out transactions as the basis for [Apple's] commission determination [was] entirely manufactured, and Apple's reliance thereon [was] a sham." *Id.* at 993. According to Apple, Apple hired the consulting firm Analysis Group, which started in the spring of 2023, to explore how Apple might "fairly charge for the value that it provides to developers . . . while implementing a linkout to allow [users] to purchase from the web." Yet, the district court found that the "report did not materially factor into Apple's

decision-making process." *Epic III*, 781 F. Supp. 3d at 993. This factual finding is not clearly erroneous given that, as the district court explained, the record suggests that Apple picked its commission rate in July 2023, and the report is dated January 2024. *See id.* at 967–968.

Regardless, the district court found Apple in contempt for other reasons. Specifically, it found that Apple "*willfully* chose to ignore the Injunction, *willfully* chose to create and impose another supracompetitive rate and new restrictions, and thus *willfully* violated the Injunction." *Id.* at 992.

C. Apple's Allegedly Privileged Materials

Apple's last methodological challenge to the district court's contempt findings is part legal and part factual. On the law, Apple argues that the district court applied the wrong test for assessing communications that involve both legal and business advice. We disagree.

We held in *In re Grand Jury*, 23 F.4th 1088 (9th Cir. 2021), "that the primary-purpose test applies to attorney-client privilege claims for dual-purpose communications." *Id.* at 1092. "Under the 'primary purpose' test, courts look at whether the primary purpose of the communication is to give or receive legal advice, as opposed to business or tax advice." *Id.* at 1091. However, *Grand Jury* left open whether legal advice must be "*the* primary purpose" or just "*a* primary purpose." *Id.* at 1094 (emphases in original). The latter test was adopted by the D.C. Circuit in *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014). According to Apple, we should apply the *Kellogg* test to dual-purpose communications, as those at issue here.

We decline Apple's invitation to apply *Kellogg* in this case. As in *Grand Jury*, we find "no need to adopt or apply the *Kellogg* formulation of the primary-purpose test here." 23 F.4th at 1095. First, although one can "see the merits of the reasoning in *Kellogg*," Apple cites nothing to change our court's conclusion that "[n]one of [its] other sister circuits have openly embraced *Kellogg* yet." *Id.* at 1094. Second, the "*Kellogg* test would only change the outcome of a privilege analysis in truly close cases, like where the legal purpose is just as significant as a non-legal purpose." *Id.* at 1095.

On these facts, Apple has not presented a close privilege call, even reviewing de novo. Apple's briefing addresses only two documents in any detail. First, the district court relied on an "internal presentation" that "proposed two options for achieving compliance with the Injunction" entitled "Proposed responses to Epic injunction." Second, the district court relied on a June 2023 presentation titled "Epic Injunction Implementation Proposal." While some of these documents contained some privileged communications, those communications were redacted.

Among what remains, legal advice was not the primary purpose of the communications. Rather, the communications largely relate to Apple's business personnel, and their consideration of how the company could offer linked-out purchases without losing revenue. Apple contends that these documents "were 'prompted by a Court order.'" But whether *Kellogg* applies or not, Apple must do more than show the "dual-purpose communication was made 'because of' the need to give or receive legal advice." *Grand Jury*, 23 F.4th at 1092. The fact that the Injunction

prompted, or caused, these communications is not enough.

Next, Apple argues that one of these documents contained a slide with a screenshot of the Injunction and the other contained a slide listing some "[r]equirements" and "[k]ey elements under consideration" from the Injunction. But neither slide shows that receiving legal advice was even *a* primary purpose, much less *the* primary purpose. Both slides were at the beginning of the presentation, and in the following slides, Apple analyzed how various compliance options would affect its revenue, not the strength or risk of its legal positions. In context, these initial slides were merely an introduction to the bulk of the presentation. Because the unredacted parts of the following slides consisted of classic business advice regarding business risks, there was no error in the district court's privilege analysis.

D. The District Court's Contempt Findings

Having resolved Apple's methodological arguments, we turn to the merits of the district court's contempt analysis. Civil contempt must be shown by clear and convincing evidence. *See In re Dual-Deck*, 10 F.3d at 695. Under the Injunction, Apple could not "prohibit[ ] developers from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms" outside of Apple's App Store. Ultimately, the parties' dispute turns on the meaning of the key word "prohibit," which can be interpreted to mean "[t]o prevent, preclude, or severely hinder." *Prohibit*, Black's Law Dictionary (12th ed. 2024).

i. Apple's 27% commission

The first question is whether charging a 27% commission has a prohibitive effect, in violation of the Injunction. We agree with the district court that it does. On purchases made through IAP, Apple charges 30% commission. On linked-out purchases, it charged 27%. However, Apple knew that processing linked-out purchases would cost developers more than 3%. As the district court found, "Apple willfully set a commission rate that in practice made all alternatives to [its platform] economically non-viable." *Epic III*, 781 F. Supp. 3d at 992. The district court found no evidence that any developer chose to direct customers to their own purchasing mechanisms and pay Apple's 27% commission in doing so. *See id.* at 982.

Apple is not the first litigant to try burdening what it could not prohibit. Two hundred years ago, Congress created the Bank of the United States, and the state of Maryland tried to tax it. *See M'Culloch v. Maryland*, 17 U.S. 316, 317–18, 4 Wheat. 316, 4 L.Ed. 579 (1819). The Supreme Court saw through this ploy: Maryland could not tax the bank because "the power to tax involves the power to destroy[.]" *Id.* at 431. In the same way, Apple has demonstrated that charging commissions on linked-out purchases gives it the power to prohibit them. "An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation." *Id.* at 327. Once Apple's commission on those transactions was large enough, no rational developer would offer them. The Injunction prohibits that kind of conduct.

Apple responds that the Injunction says nothing about commissions. But Apple does not "have an

immunity from civil contempt because the plan or scheme which [it] adopted was not specifically enjoined." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192, 69 S.Ct. 497, 93 L.Ed. 599 (1949). Having "experiment[ed] with disobedience of the law," *id.*, it must now bear the burden of being found in contempt. If Apple was correct that "[c]ivil contempt [could be] avoided today by showing that the specific plan [it] adopted . . . was not enjoined," the district court would have to enter "a new" injunction targeting Apple's "particular plan." *Id.* "Thereafter," Apple could "work out a plan that was not specifically enjoined" and "once more obtain[ ]" "[i]mmunity . . . because the new plan was not specifically enjoined." *Id.* at 192–93, 69 S.Ct. 497. By doing so, "a whole series of wrongs [would be] perpetrated and [the Injunction would] go[ ] for naught." *Id.* at 193, 69 S.Ct. 497.

Apple emphasizes that, in its view, the district court expressly permitted it to charge a commission on linked-out purchases. *See Epic I*, 559 F. Supp. 3d at 1042. Apple overreads the district court's decision. The language that Apple quotes from the district court's liability opinion is pulled from its discussion of in-app purchases and alternatives to IAP that would still allow Apple to collect a commission.[3] The district

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[3] In *Epic I*, the district court assessed the market "for in-app purchases of in-app content." 559 F. Supp. 3d at 1042. Epic argued that "Apple [should] be barred from restricting or deterring in any way 'the use of in-app payment processors other than IAP.'" *Id.* The district court rejected this argument because "IAP is the method by which Apple collects its licensing fee from developers," and "[e]ven in the absence of IAP, Apple could still charge a commission on developers"; "[i]t would simply be more difficult for Apple to collect that commission." *Id.* The court

court did not mention a commission for linked-out purchases, presumably because linked-out purchases were not permitted at that time. The same is true of our previous opinion. *See generally Epic II*, 67 F.4th 946.

That being said, it would be difficult to say that *all* commissions violate the Injunction, and, as discussed below, we decline to do so.[4] However, Apple did not charge *any* commission; it charged a prohibitive commission. The district court did not abuse its discretion for finding Apple in contempt for imposing it.

ii. Apple's link design restrictions

The next question is whether Apple prohibited users from making purchases on developers' sites, in violation of the Injunction, with its restrictions on link design in the Link Entitlement Program. There are several restrictions at issue, and although we address each separately, all violate the Injunction. The first two restrictions violate the strict letter of the Injunction. For the remaining restrictions, we will assume *arguendo* that Apple did not violate the strict letter of the Injunction. Even so, these restrictions

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explained that, "in such circumstances[,] [ ] Apple may rely on imposing and utilizing a contractual right to audit developers annual accounting to ensure compliance with its commissions, among other methods." *Id.* at 1042 n.617. This discussion was aimed at the practical reality of using IAP versus another commission method for in-app purchases of in-app content.

[4] In its April 30 Order, the district court seems to indirectly acknowledge that the Injunction allows Apple to charge some commission on linked-out purchases, but it explains that Apple lost the "opportunity" to "valu[e] its intellectual property" given its "retroactive[ ] justif[ication of its] desired end result." *Epic III*, 781 F. Supp. 3d at 993.

violated the Injunction's "implicit command to refrain from action designed to defeat it." *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 413, 80 S.Ct. 441, 4 L.Ed.2d 400 (1960) (Frankfurter, J., concurring).

First, the Injunction requires Apple to allow developers to use both "links" and "buttons." Apple did not allow buttons: it allowed developers to use something it calls a "plain button," but the "plain button" is no button at all. A plain button "may not be enclosed in a shape that uses a contrasting background fill"; instead, the "background surrounding text must match the background of [the] app's page." Thus, the alleged "button" is invisible. Because the Injunction requires Apple to permit both "buttons" and "links," merely making the link, not the button, visible does not comply with the Injunction; the Injunction contemplates *both* "buttons" and "links," not one of the two.

Second, beyond "buttons" and "links," the Injunction requires Apple to permit "other calls to action." Apple did not do so. Developers can use only five different templates, and these templates are essentially links. Each contains a single phrase like "Lower price offered" or "Buy for $X.XX" and the link itself. Whether these templates are characterized as "buttons" or "links," the Injunction permits developers to use "other calls to action." By limiting developers to particular, limited templates, Apple violated the Injunction.

Third, Apple requires that external purchase links "[n]ot be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using in-app purchase." For example, according to the district court, "if an app has an item shop where a user could purchase a digital product . . . nowhere in

that shop could the external purchase link appear." *Epic III*, 781 F. Supp. 3d at 971. As a result, external purchase links never appear where users naturally expect to see their purchase options and would find them most useful: at the time of purchase. In practical effect at least, this restriction prohibited linked-out purchases.

Fourth, Apple deployed a so-called "scare screen." Before users could use an external purchase link, they would be warned in large, bold font that they were "about to go to an external website" and that "Apple is not responsible for the privacy or security of purchases made on the web." The record confirms that Apple designed the scare screen to prevent external purchases. It chose the phrase "external website" because it "sounds scary." It used the developer's name, rather than the app name, to make the screen "even worse." It discussed how to make the screen "scarier" and how to "'scare' users a bit." By engineering this screen to prevent users from completing linked-out purchases, Apple engaged in conduct designed to defeat the Injunction.

Fifth, Apple required developers to use static URLs rather than dynamic URLs. Clicking dynamic links can automatically log a user into their account; with static links, the user must log in manually. Yet again, the record shows that Apple designed the purchasing experience to make external links as hard to use as possible. This flies in the face of the Injunction's spirit. As the district court found, "Apple's sensitivity analyses of breakage reveal that Apple was modeling precisely the amount of friction needed in a transaction to ensure that link-out transactions were not viable for a developer." *Epic III*, 781 F. Supp. 3d at 994. It created "an ensemble

of requirements that significantly reduces developers' ability to steer consumers to any competitive, favorable alternatives." *Id.*

Apple responds that it adopted all these restrictions to advance users' privacy and security. This is irrelevant to the contempt analysis here. Whatever the Injunction prohibited, Apple must not do.[5] In any event, the district court found that Apple's privacy and security justifications are pretextual, and there was no clear error in its ruling. *See Epic III*, 781 F. Supp. 3d at 972. For example, one of Apple's witnesses testified that he could think of no other reason to use a plain, link-style "button" other than to stifle competition. *See id.* at 973. As another example, Apple claimed that dynamic links were dangerous because they could be used to pass along private information, but Apple allows developers to set up dynamic links for purposes other than linked-out purchases. *See id.* at 979. Apple offers no credible reason for its restrictions on external purchase links.

Accordingly, the district court did not abuse its discretion by holding Apple in contempt for imposing its link design restrictions.

III. The District Court's Contempt Sanctions

The April 30 Order imposes sanctions for Apple's contempt by listing six proscriptive restrictions on Apple's conduct. Most of them restate (albeit more specifically) Apple's existing obligations under the

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[5] Indeed, for contemnors like Apple who "are not unwitting victims of the law" but "took a calculated risk when under the threat of contempt," and "where as here the aim is remedial and not punitive, there can be no complaint that the burden of any uncertainty in the decree is on [Apple's] shoulders." *McComb*, 336 U.S. at 193, 69 S.Ct. 497.

Injunction. That being said, some parts of the April 30 Order's restrictions are overbroad, and the commission prohibition does not qualify as a civil contempt sanction in its present form. As outlined below, we modify part of the April 30 Order and remand to the district court for further modification.

We reject the rest of Apple's challenges. Excluding the reversed portions of the April 30 Order, some of Apple's challenges should have been, but were not, raised when Apple appealed the Injunction. Moreover, to the extent that they are not waived, those challenges fail on the merits. The district court also did not deprive Apple of due process. We therefore affirm the balance of the April 30 Order.

A. The April 30 Order's Permanent Restriction on Apple's Link Design Restrictions

The court frames its April 30 Order as a civil contempt order. *See Epic III*, 781 F. Supp. 3d at 1002–04. However, Apple argues that "[t]he district court [improperly] imposed a new and far broader injunction . . . under the guise of exercising its civil contempt power." According to Apple, the April 30 Order's "new" prohibitions are unjustified. It argues that "[t]he[ ] new restrictions are inherently punitive and cannot be imposed using the non-punitive civil contempt power, no matter the court's findings." We agree with Apple only in part. We begin with the April 30 Order's restrictions related to Apple's link design restrictions, which we conclude largely do no more than coerce Apple to comply with the Injunction, and thus, do not abuse the district court's discretion.

When a defendant is in contempt, a district court can "'coerc[e] the defendant to do' what a court had

previously ordered [it] to do." *Turner v. Rogers*, 564 U.S. 431, 441, 131 S.Ct. 2507, 180 L.Ed.2d 452 (2011) (first alteration in original) (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 55 L.Ed. 797 (1911)). "District courts have broad equitable power to order appropriate relief in civil contempt proceedings." *Sec. & Exch. Comm'n v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003), *amended on denial of reh'g*, 335 F.3d 834 (9th Cir. 2003). Even so, we "review the court's exercise of that power for an abuse of discretion." *Id.*

Applying these standards, we review the restrictions from the April 30 Order. First, the district court enjoins Apple from "[r]estricting or conditioning developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app." *Epic III*, 781 F. Supp. 3d at 1003. The district court did not necessarily abuse its discretion with this restriction. Prohibiting Apple from limiting developers to "plain buttons" and to the five templates is necessary to coerce compliance with the Injunction, by ensuring that developers can place their buttons, links, and other calls to action in the purchase flow.

However, part of this restriction is too broad. As Apple argues, if there are no limits to developer links, "developers [can] create link-out mechanisms that so elevate the external link over Apple's IAP mechanism—e.g., by putting the external link in large and noticeable font and the IAP link in small or near-unreadable font—as to trample Apple's right to offer IAP entirely." Under the Injunction, Apple cannot undermine developers' right to offer linked-out purchases, but that does not mean that developers can trample Apple's payment option either. Even

under the district court's broad equitable power, allowing developers to muzzle Apple's messaging is not necessary to protect or give life to the Injunction. After all, the Injunction was intended to eliminate barriers "prevent[ing] [users] from making informed choices." *Epic I*, 559 F. Supp. 3d at 1055.

Accordingly, we modify the April 30 Order so that, where both Apple and a developer offer a purchase option, Apple may restrict the developer from placing its buttons, links, or other calls to action in more prominent fonts, larger sizes, larger quantities, and more prominent places than Apple uses for its own buttons, links, or other calls to action. But Apple must let developers place their buttons, links, or other calls to action in at least the same fonts, sizes, quantities, and places as Apple's own, and the district court's prohibition on "language" restrictions must not include Apple's typical restrictions (if any) to ensure that its general content standards are upheld by limiting offensive language and similar portrayals.

Second, Apple cannot "[p]rohibit[ ] or limit[ ] the use of buttons or other calls to action, or otherwise condition[ ] the content, style, language, formatting, flow or placement of these devices for purchases outside an app." *Epic III*, 781 F. Supp. 3d at 1003. This restriction is nearly identical to the previous one, except that it applies to "buttons" and "other calls to action," rather than "links." Because the Injunction applies equally to "buttons," "links," and "other calls to action," we modify this restriction the same way as the previous one.

Third, Apple cannot "exclud[e] certain categories of apps and developers from obtaining link access." *Epic III*, 781 F. Supp. 3d at 1003. In effect, this restriction means that Apple cannot exclude

developers in the VPP and NPP programs.[6] However, the district court found in the April 30 Order that excluding these developers "does not itself constitute a violation of the Injunction." *Id.* at 994 n.67. Although the district court found that this exclusion "highlight[ed] Apple's all-or-nothing approach," *id.*, it did not find that allowing VPP and NPP developers to use external links is necessary to enforce the Injunction, *see id.* at 993–995, 1002–04. Without more, imposing this restriction was an abuse of discretion. This problem, however, may be cured if the district court finds against Apple on either of the two issues that it did not consider: whether the exclusion violated the Injunction, or whether enjoining it was necessary to protect and give life to the Injunction. We remand to allow the district court to modify the April 30 Order (or not) depending on its findings.

Fourth, Apple is prohibited from "[i]nterfering with consumers' choice to proceed in or out of an app by using anything other than a neutral message apprising users that they are going to a third-party site." *Id.* at 1003. Such conduct is prohibited by the Injunction. Apple's "scare screen" is, at best, designed to evade that rule.[7] *See supra* Section II.D. The district court permitted Apple to use a neutral message apprising users that they are leaving the

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[6] Developers in these programs have a standard commission rate of 15% rather than Apple's standard 30% IAP commission.

[7] As the district court noted, Apple "does not require developers selling *physical* goods to display any warning at all before users proceed to make a payment with a third-party payment solution." *Id.* at 974.

App Store, meaning that the only banned messages are those that would effectively prohibit linked-out purchases. Thus, this fifth restriction is limited to coercing compliance with the Injunction.

Fifth, Apple cannot "[r]estrict[ ] a developer's use of dynamic links that bring consumers to a specific product page in a logged-in state rather than to a statically defined page[.]" *Epic III*, 781 F. Supp. 3d at 1004. Because Apple's static-link restriction violates the Injunction, this restriction does nothing more than more specifically enjoin what the Injunction already generally enjoined. *See supra* Section II.D.

B. The April 30 Order's Permanent Restriction on Apple's Ability to Charge a Commission

We review the sixth restriction (the commission prohibition) pursuant to a separate analysis. Under the April 30 Order, Apple cannot "[i]mpos[e] any commission or any fee on purchases that consumers make outside an app[.]" *Epic III*, 781 F. Supp. 3d at 1003. Apple argues that "[t]he district court's sweeping new zero-commission rule . . . is not tailored to Epic's claimed harm[and] improperly imposes a punitive sanction." We agree.

In our view, as the April 30 Order is written, it is more like a punitive criminal contempt sanction than a civil contempt sanction or modification of the Injunction. The biggest problem with the commission prohibition is that it permanently prohibits the compensation that Apple can receive for linked-out purchases of digital products, regardless of whether the commission is itself prohibitive.

"To determine whether contempt sanctions are civil or criminal, we examine 'the character of the

relief itself.'" *Parsons v. Ryan*, 949 F.3d 443, 455 (9th Cir. 2020) (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994)). "Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance." *McComb*, 336 U.S. at 191, 69 S.Ct. 497.

"The difference between criminal and civil contempt is in the intended effects of the court's punishment." *United States v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980). A contempt remedy is "punitive and criminal if it is imposed retrospectively for a 'completed act of disobedience,' such that the contemnor cannot avoid or abbreviate the confinement through later compliance." *Bagwell*, 512 U.S. at 828–29, 114 S.Ct. 2552 (citation modified) (quoting *Gompers*, 221 U.S. at 443, 31 S.Ct. 492); *see also Powers*, 629 F.2d at 627 ("[Criminal contempt] serves to vindicate the authority of the court and does not terminate upon compliance with the court's order. The punishment is unconditional and fixed.").

On the other hand, a remedy is civil—and may be imposed without a jury trial or proof beyond a reasonable doubt—if it is meant to coerce the contemnor into complying with an order or compensate someone else for losses caused by the contempt. *See Bagwell*, 512 U.S. at 827, 829, 114 S.Ct. 2552. Civil contempt sanctions "are . . . avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard." *Id.* at 827, 114 S.Ct. 2552.

Here, to be a civil contempt sanction, the commission prohibition must either: (i) compensate

Epic for Apple's willful noncompliance with the Injunction; or (ii) coerce Apple into complying with the Injunction moving forward. The commission prohibition is clearly not compensatory. In fact, it is unlikely that any sanction could compensate Epic for Apple's noncompliance here; there is no way to quantify the number of developers who would have implemented external links to Epic's Games Store, or the number of consumers who would have purchased digital content using those links, had Apple not prohibited them. However, neither is the commission prohibition coercive. Rather than coercing Apple to comply with the spirit of the Injunction with a reasonable, non-prohibitive commission, the district court used blunt force to ban all commissions, abusing its discretion.

Apple must be able to purge its civil contempt by complying with the Injunction. *See Bagwell*, 512 U.S. at 829, 114 S.Ct. 2552 ("Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge."). It is true, as discussed above, that the power to charge commissions on linked-out purchases is effectively the power to prohibit those purchases. *See supra* Section II.D. But it is not true that the Injunction enjoins *any* commission and *any* fee. It bars only *prohibitive* commissions or fees. The district court's commission prohibition goes too far by denying Apple any way to purge its contempt by, for example, imposing a non-prohibitive, reasonable commission or fee to ensure security and privacy for users.[8] This was an abuse of

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[8] In its April 30 Order, the district court cites *H.I.S.C., Inc. v. Franmar Int'l Importers, Ltd.*, 2022 WL 104730 (S.D. Cal. Jan. 11, 2022), for its authority to impose civil contempt sanctions by

the district court's discretion. While the April 30 Order's restrictions related to link design are also permanent, those restrictions are more closely tied to the strict terms and spirit of the Injunction that Apple has violated, and more easily affirmed as a clarification of that Injunction.

The district court could have fashioned this prohibition to be conditional. For example, the prohibition would have been conditional if the district court had banned any commission or any fee for linked-out purchases until Apple proposed, and the district court approved, a reasonable, non-prohibitive commission that was supported with analysis by an independent, court-appointed individual or firm. It also would have been conditional if the district court banned any commission or any fee for linked-out purchases until Apple proposed a "reasonable fee" for linked-out purchases based on Apple's "actual costs" to "ensure user security and privacy." *See, e.g., In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 945 (9th Cir. 2025). Instead, the district court permanently prohibited all commissions and fees.

We reverse and remand this portion of the April 30 Order. There are two avenues that the district

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clarifying the terms of a permanent injunction. *See Epic III*, 781 F. Supp. 3d at 1003. However, in that case, the district court's clarifications to the permanent injunction were tailored to the initial harm (trademark infringement). *See Franmar*, 2022 WL 104730 at *6. In contrast, here, the district court went beyond the underlying UCL violation in ordering relief. Recall that the underlying UCL violation was that Apple's anti-steering provisions "'threaten[ed] an incipient violation of an antitrust law' by preventing informed choice among users of the iOS platform." *Epic I*, 559 F. Supp. 3d at 1055 (quoting *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187, 83 Cal.Rptr.2d 548, 973 P.2d 527 (1999)).

court could, in theory, take on remand to resolve its error: (i) it could modify the commission prohibition to be a conditional civil contempt sanction; or (ii) rather than imposing a contempt sanction, the district court could restrict Apple from imposing a prohibitive commission by modifying the Injunction.[9] On remand, the district court should amend the April 30 Order's commission prohibition as either a purgeable civil contempt sanction or properly tailored modification of the Injunction, as we consider in more detail below.

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In sum, having reviewed all six restrictions in the April 30 Order, we modify the April 30 Order as follows: (i) where both Apple and a developer offer a purchase option, Apple may restrict the developer from placing its buttons, links, or other calls to action

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[9] If the district court chooses to modify the Injunction to enjoin commissions for linked-out purchases, the district court must tailor the Injunction modification to the underlying UCL violation. *See Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991) ("Injunctive relief, however, must be tailored to remedy the specific harm alleged."). However, the UCL violation, which resulted in an informational harm, does not require that *all* commissions and *all* fees be prohibited: the spirit of the Injunction contemplates the *prohibitive* commissions, and the text of the Injunction does not address commissions at all. The presence or absence of a commission does not alter consumers' access to information about purchase options. All else being equal, the 27% commission here violated the Injunction not because it was a commission; it violated the Injunction because it was prohibitive, and consequently, developers did not opt into Apple's Link Entitlement program, effectively stripping consumers of access to information about other purchase options. The district court must be mindful of the threshold upon which commissions become "prohibitive."

in more prominent fonts, larger sizes, larger quantities, and more prominent places than Apple uses for its own buttons, links, or other calls to action; (ii) Apple may restrict developers from using language that violates its general content standards, if such standards exist; (iii) Apple is not specifically enjoined from excluding developers participating in the VPP and NPP programs from simultaneously obtaining link access; and (iv) as clarified below, Apple is not enjoined from imposing a commission or fee on purchases that consumers make in an app utilizing iOS outside Apple's App Store (a linked-out purchase) as permitted by the district court on remand. The Injunction and April 30 Order should otherwise remain in full effect.

We remand to the district court for the following: (i) to consider whether Apple's exclusion of VPP and NPP developers violated the Injunction, or whether it was necessary to protect or give life to the Injunction; and (ii) to amend the April 30 Order's commission prohibition as either a purgeable civil contempt sanction or properly tailored clarification or modification of the Injunction.

We recommend some possible courses of action to the district court regarding an appropriate commission or fee limitation on remand. Apple should be able to charge a commission on linked-out purchases with the following in mind: (a) Apple should be able to charge a commission on linked-out purchases based on the costs that are genuinely and reasonably necessary for its coordination of external links for linked-out purchases, but no more. We refer to these costs as "necessary costs."; (b) In making a determination of Apple's necessary costs, Apple is entitled to some compensation for the use of its

intellectual property that is directly used in permitting Epic and others to consummate linked-out purchases. In deciding how much that should be, the district court should consider the fact that most of the intellectual property at issue is already used to facilitate IAP, and costs attributed to linked-out purchases should be reduced equitably and proportionately; (c) Apple should receive no commission for the security and privacy features it offers to external links, and its calculation of its necessary costs for external links should not include the cost associated with the security and privacy features it offers with its IAP[10]; (d) Apple should not be able to charge any commission for linked-out purchases until such time as the district court has approved an appropriate fee, but both parties should be encouraged to reach agreement and/or seek the court's approval of its proposed fee expeditiously; and (e) The district court may determine how best to make the referenced determination but one possibility includes inviting the parties to provide expert testimony based upon which it would determine the appropriate fee or commission to be chargeable for Apple's actual costs of providing services for linked-out transactions. The district court might also consider whether to establish a "Technical Committee" somewhat like what was done in *In re Google*, 147 F.4th 917, to aid it in determining a reasonable fee and/or commission that Apple can charge for linked-out purchases. *See id.* at 954–55.

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[10] According to Apple, its app review process includes "meticulous review by human experts to 'protect against fraud, privacy intrusion, and objectionable content beyond levels achievable by purely technical measures.'"

C. Apple's Miscellaneous Challenges to the April 30 Order

We next evaluate Apple's other miscellaneous challenges to the district court's contempt sanctions in the April 30 Order. We start by noting Apple's waiver. "When a party could have raised an issue in a prior appeal but did not, a court later hearing the same case need not consider the matter." *United States v. Nagra*, 147 F.3d 875, 882 (9th Cir. 1998). To the extent that the April 30 Order merely restates the Injunction's restrictions in a more specific manner, these restrictions originate in the Injunction, not the April 30 Order. Thus, where the district court's April 30 Order enjoined Apple from conduct that was already enjoined, Apple waived its challenges to the April 30 Order on equitable abstention Takings Clause, and First Amendment grounds. We now turn to these arguments on their merits, to the extent that the April 30 Order is not subsumed by the Injunction. We reject them all.

i. Equitable abstention

Apple argues that the April 30 Order's commission prohibition is "judicial ratemaking that is not permitted under the UCL." Courts "will abstain from employing the remedies available under [California's UCL] in appropriate cases[.]" *Willard v. AT&T Commc'ns of Cal., Inc.*, 204 Cal. App. 4th 53, 59, 138 Cal.Rptr.3d 636 (2012) (internal quotation omitted). This "equitable abstention is appropriate" when a UCL claim "would drag a court of equity into an area of complex economic or similar policy." *Id.* (citation modified) (internal quotation omitted).

For example, in *California Grocers Association v. Bank of America*, 22 Cal. App. 4th 205, 27 Cal.Rptr.2d

396 (1994), a California court determined that it could not resolve "whether service fees charged by banks are too high and should be regulated." *Id.* at 218, 27 Cal.Rptr.2d 396. That is "a question of economic policy" reserved for legislatures and regulators. *Id.* Federal banking regulators "decided that all charges to customers should be arrived at by each bank on a competitive basis." *Id.* at 218–19, 27 Cal.Rptr.2d 396 (citation modified) (quoting 12 C.F.R. § 7.8000(a)).

In *Willard v. AT&T Communications of California, Inc.*, 204 Cal. App. 4th 53, 138 Cal.Rptr.3d 636 (2012), a California court also determined that it was not an abuse of discretion for a trial court to determine that it could not "judicial[ly] review . . . AT & T's fees for nonpublished service and unlisted service." *Id.* at 60, 138 Cal.Rptr.3d 636. The court explained that "[t]he administrative agency charged with responsibility over the challenged fees ha[d] expressly taken [the] industry from regulation to deregulation, after concluding the complex market forces in play were sufficient to avoid abuse." *Id.* at 60–61, 138 Cal.Rptr.3d 636 (citing Cal. Pub. Util. Code § 2893(e)). Thus, although the plaintiffs had not "alleg[ed] the market [wa]s less competitive now than it was [when the agency deregulated], [they were] asking the judiciary to reregulate fees which the [agency] determined should be deregulated." *Id.* at 61, 138 Cal.Rptr.3d 636.

This case is not comparable to *California Grocers* or *Willard*. Apple can point to no statute or regulation subjecting commissions for linked-out purchases to unrestricted market forces. Without that, Apple has given no reason to hold that "[i]t is primarily a legislative and not a judicial function" to apply the UCL here. *See Cal. Grocers*, 22 Cal. App. 4th at 218,

27 Cal.Rptr.2d 396 (quoting *Max Factor & Co. v. Kunsman*, 5 Cal. 2d 446, 454–55, 55 P.2d 177 (1936), *aff'd sub nom., Pep Boys v. Pyroil Sales Co.*, 299 U.S. 198, 57 S.Ct. 147, 81 L.Ed. 122 (1936)). In any case, the district court did not attempt to "regulat[e] . . . pricing via injunction on an ongoing basis." *Id.* (quoting *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383, 1391, 1 Cal.Rptr.2d 446 (1991)). It did not set a price; it instead enjoined Apple from charging a commission at all (albeit improperly). Thus, the April 30 Order did not impose price controls requiring equitable abstention under the UCL.

ii. Regulatory taking

Apple also argues that the April 30 Order violated the Takings Clause by forbidding it from charging a commission on linked-out purchases. According to Apple, the commission prohibition is problematic because it will not receive the compensation that it claims for its intellectual property. We conclude that even if Apple has not waived this challenge, the April 30 Order was not a regulatory taking.

Judicial decisions "contraven[ing] the established property rights" of a person may violate the Takings Clause. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 733, 130 S.Ct. 2592, 177 L.Ed.2d 184 (2010). "[S]everal factors . . . have particular significance" in deciding whether a taking has occurred, *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), and those factors do not favor Apple.

First, the "character of the governmental action" matters, and takings are "more readily . . . found when the interference with property can be characterized as a physical invasion by government."

Id. There is no physical taking here. Second, courts consider "[t]he economic impact of the regulation on the claimant." *Id.* Here, while the April 30 Order would deprive Apple of "its anticompetitive revenue stream," *see Epic III*, 781 F. Supp. 3d at 952, Apple is hardly otherwise uncompensated for its efforts to create the iOS and App Store. It may, for example, charge consumers for iOS devices and for commissions on in-app purchases. Third, an action is more likely a taking if it "interfere[s] with distinct investment-backed expectations." *Penn. Cent.*, 438 U.S. at 124, 98 S.Ct. 2646. Here, Apple had no expectation that it would be able to charge commissions, much less anticompetitive commissions, on linked-out purchases when investing into its iOS system because it previously prohibited such transactions.

iii. First Amendment

Apple next argues that the April 30 Order's "prohibitions are so broad that they violate Apple's First Amendment rights." We likewise reject this argument. Sometimes, "ordering a party to provide a forum for someone else's views implicates the First Amendment." *Moody v. NetChoice, LLC*, 603 U.S. 707, 728, 144 S.Ct. 2383, 219 L.Ed.2d 1075 (2024). However, this is true only if "the regulated party is engaged in its own expressive activity, which the mandated access would alter or disrupt." *Id.*

The April 30 Order (and the Injunction) may alter or disrupt Apple's ability to effectively prohibit consumers from completing linked-out purchases, but it has not interfered with Apple's own expressive activity. Apple claims that its speech has been limited because it cannot restrict developers' style,

language, formatting, or quantity of links for purchases outside an app or otherwise condition the content, style, or language for purchases outside an app. But that restriction describes the developers' expressive activity, not Apple's expressive activity. Apple claims that without such restrictions, it will be effectively compelled to engage in expressive activity by allowing developers to engage in speech that it may not agree with, such as offensive speech.

Apple's argument proves too much. If Apple is correct, a regulated party's expressive activity is implicated whenever it cannot restrict someone else's speech on a forum it runs. If so, ordering a party to provide a forum for someone else's views will always alter or disrupt expressive activity. That absolute rule is inconsistent with *Moody*. Ultimately, Apple is unlike "the editors, cable operators, . . . parade organizers[, and] . . . social-media platforms" that can take advantage of *Moody*. 603 U.S. at 738, 144 S.Ct. 2383. Unlike them, it has not shown it is "in the business . . . of combining 'multifarious voices' to create a distinctive expressive offering." *Id.*

D. Due Process

According to Apple, "[i]f the district court believed that Apple's new commission violated the UCL, it could have instituted proceedings to modify the injunction consistent with due process." We disagree with Apple that the district court violated due process here. "Before issuing injunctive relief, the court must provide the affected party with notice and an opportunity to be heard." *Armstrong v. Brown*, 768 F.3d 975, 979–80 (9th Cir. 2014). The district court could not have run afoul of this rule to the extent that it did not impose new or modified injunctive relief.

But to the extent it did, or to the extent that the district court imposed civil contempt sanctions, Apple received notice and an opportunity to be heard.

Apple received notice because Epic requested the alleged modifications. It challenged: the 27% commission; Apple's restrictions on the language, look, and location of developers' links; the "scare screen"; the ban on dynamic links; and the restriction to "plain buttons." Even when the "district court d[oes] not provide the defendant with formal notice of a possible injunction," it may impose "injunctive relief . . . [if] the defendant was aware of the potential injunction based on various filings by the parties." *Armstrong*, 768 F.3d at 980 (summarizing *Penthouse Int'l, Ltd. v. Barnes*, 792 F.2d 943, 950 (9th Cir. 1986)).

Apple also had the opportunity to be heard. The district court held an evidentiary hearing over several days, and Apple was able to call witnesses and cross-examine Epic's witnesses. Apple does not argue that its presentation of evidence or arguments supporting its Link Entitlement program would have been different if the district court had detailed its relief earlier. *See id.* (determining that there is "no merit" to a due process challenge based on a "district court's modification to [an] injunction . . . made in response to a request by [the plaintiffs] to hold the [defendant] in contempt."). The district court took every step necessary to afford Apple due process.[11]

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[11] It is unlikely that the district court intended to impose criminal contempt sanctions with the commission prohibition here. *See supra* Section III.B.

IV. Apple's Request to Vacate the Injunction

Before the district court, Apple argued that, whether it violated the Injunction or not, the Injunction ought not to be enforced going forward. We disagree. First, although Apple argues that a recent decision from a California Court of Appeal conflicts with the Injunction, we find no conflict. Second, although Apple argues that the Supreme Court's recent ruling on nationwide injunctions clashes with the Injunction, that ruling does not undermine our previous analysis of the Injunction's scope.

A. Apple's Rule 60(b)(5) Motion

A party can obtain relief from a judgment if "applying it prospectively is no longer equitable[.]" Fed. R. Civ. P. 60(b)(5). "[I]t is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction . . . can show 'a significant change either in factual conditions or in law.'" *Agostini v. Felton*, 521 U.S. 203, 215, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992)). Here, Apple argues that the Injunction must be vacated in light of the California Court of Appeal's recent decision in *Beverage v. Apple, Inc.*, 101 Cal. App. 5th 736, 320 Cal.Rptr.3d 427 (2024), *review denied* (July 10, 2024).

There is no conflict between the judgment here and *Beverage*. In *Beverage*, the California Court of Appeal explained that its "decision [wa]s a narrow one." 101 Cal. App. 5th at 755. That decision "is limited to situations typified by [*Beverage*], where the same conduct found immune from antitrust liability by the *Colgate* doctrine is also alleged to violate the 'unfair' prong of the UCL." *Id.* Here, Apple has

violated the "unfair" prong of the UCL, but Apple has not identified when its conduct was found immune from antitrust liability pursuant to the *Colgate* doctrine. In contrast, this court held that Epic's antitrust claims "suffer[ed] from a proof deficiency, rather than a categorical legal bar" as in *Colgate*. *Epic II*, 67 F.4th at 1001 (citation modified).

Moreover, although Apple was the defendant in *Beverage*, the Court of Appeal did not hold that *Colgate* aided Apple. There, the plaintiffs abandoned part of their claim, and the court assumed without deciding that the plaintiffs' allegations were legally insufficient under *Colgate*. *See* 101 Cal. App. 5th at 752, 320 Cal.Rptr.3d 427. Instead, the court focused on "whether [the plaintiffs] adequately alleged an 'unfair' act or practice under the UCL considering the trial court's ruling that Apple's practices constituted permissible unilateral conduct." *Id.* Thus, *Beverage* never analyzed the question that Apple says was decided in its favor.

The opinion in *Beverage* also distinguished this court's opinion, which undermines Apple's claim that the decisions irreconcilably conflict. *Beverage* distinguished this court's opinion because it did not "engage[ ] [in] a rigorous analysis of the *Colgate* doctrine and its effect on UCL claims" and was thus not "persuasive *on the precise issue* presented by th[e] appeal" in *Beverage*. *Id.* at 756 n.6, 320 Cal.Rptr.3d 427 (emphasis added). That precise issue was whether the plaintiffs could sue under the UCL's "unfair" prong assuming that *Colgate* immunized Apple. That issue is not presented here because, again, no court has held that *Colgate* immunized Apple.

Apple's prior arguments also undercut its current position. Apple told the California Supreme Court that it should not review the Court of Appeal's decision in *Beverage* because it did not conflict with this court's prior opinion. *See* Answer to Petition for Review at *11–12, *Beverage v. Apple Inc.*, No. S285154 (Cal. June 18, 2024) (rejecting the argument that "the decision below [was] inconsistent with [the] decisions in a federal court lawsuit involving Epic Games"). Apple stated that "[t]he Ninth Circuit did not . . . address the applicability of the *Colgate* doctrine to the conduct challenged in that case." *Id.* at *12.

B. Apple's Argument Pursuant to *CASA*

In its reply brief and in a Rule 28(j) letter, Apple argues that the Injunction and "new injunction" (referring to the injunctive relief in the April 30 Order) must be vacated because they are impermissible nationwide injunctions. The Supreme Court recently expressed its disapproval of "injunctions . . . broader than necessary to provide complete relief to each plaintiff with standing to sue." *Trump v. CASA, Inc.*, 606 U.S. 831, 861, 145 S.Ct. 2540, 222 L.Ed.2d 930 (2025). The test "is whether an injunction will offer complete relief *to the plaintiffs before the court*." *Id.* at 852, 145 S.Ct. 2540 (emphasis in original). If it does, it may also "advantage nonparties," albeit "incidentally." *Id.* at 851, 145 S.Ct. 2540 (citation modified) (quoting *Trump v. Hawaii*, 585 U.S. 667, 717, 138 S.Ct. 2392, 201 L.Ed.2d 775 (2018) (Thomas, J., concurring)).

Here, we previously determined that the Injunction is consistent with *CASA*'s underlying principle because its "scope is tied to Epic's injuries"

as a developer and games distributor, not to the other developers' injuries. *Epic II*, 67 F.4th at 1003. The enjoined conduct, in relevant part, "harmed Epic by . . . preventing other apps' users from becoming would-be Epic Games Store consumers." *Id.* "Because Epic benefits in this second way from consumers of other developers' apps making purchases through the Epic Games Store, an injunction limited to Epic's subsidiaries would fail to address the full harm caused by the anti-steering provision." *Id.* To the extent that Apple is challenging the original Injunction, the Injunction does nothing more than provide complete relief to Epic, and this court has already considered, and rejected, arguments to the contrary. That Epic opted out of a class action for developers does not change the result.

The April 30 Order does not fare differently under *CASA*. Apple argues that the April 30 Order is overbroad because it enjoins Apple's conduct with respect to all developers, whether or not consumers are making a purchase using the Epic Game Store. Apple would have our court limit the April 30 Order to Epic and its subsidiaries alone, or to only gaming apps that seek to implement links out to the Epic Games Store. Epic counters that limiting the April 30 Order in the manner proposed by Apple would not facilitate the competition necessary to grant Epic complete relief. We agree with Epic on this question.

Moreover, we are persuaded by our court's discussion of *CASA* in *In re Google*.[12] In that case, we

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[12] Google has petitioned the Supreme Court for a writ of certiorari. *See Google LLC v. Epic Games, Inc.*, No. 25-521 (Oct. 29, 2025).

determined that "the scope of a permanent injunction following a finding of antitrust liability is hardly comparable to that of a preliminary injunction on a constitutional question." 147 F.4th at 958. We further explained that "*CASA*'s holding about district courts' authority under the Judiciary Act of 1789 has no bearing on whether the district court here exceeded its equitable powers under Section 16 of the Clayton Act," and "[t]he nationwide prohibitions [in that case] fit squarely within the district court's 'large discretion' to craft equitable antitrust remedies." *Id.* (quoting *Ford Motor Co. v. United States*, 405 U.S. 562, 573, 92 S.Ct. 1142, 31 L.Ed.2d 492 (1972)). While there is no antitrust liability here, the scope of a permanent injunction following an incipient antitrust violation pursuant to the UCL is also distinguishable from the injunction's scope in *CASA*. Specifically, the complete relief here is molded to "the necessities of th[is] particular case,'" which centers on anticompetitive conduct by Apple and aims to restore the information to consumers that is necessary to foster competition. *CASA*, 606 U.S. at 854, 145 S.Ct. 2540 (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944)).

Thus, the Injunction and April 30 Order will continue to apply to all linked-out purchases and not just to Epic Games or links out to the Epic Games Store. The underlying Injunction is not an impermissible nationwide injunction.

V. Apple's Request for a New Judge

Apple argues that "[t]o the extent this Court determines that a remand is required . . . it should assign the case to a different district judge." "We reassign only in 'rare and extraordinary

circumstances.'" *Planned Parenthood Great Nw. v. Labrador*, 122 F.4th 825, 844 (9th Cir. 2024) (quoting *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015), *overruled on other grounds by Ariz. All. For Retired Americans v. Mayes*, 117 F.4th 1165 (9th Cir. 2024)). Apple argues that the district judge "found that Apple and its executives had violated an earlier order," "imposed a new injunction," "assess[ed] . . . Apple's subjective motives" using allegedly privileged documents, and referred Apple for a criminal investigation. In short, Apple seeks reassignment based solely on the district court's rejection of its arguments and its determination that Apple willfully violated the court's order. This argument lacks merit. Apple may disagree with those outcomes, but they supply no basis for reassignment.

CONCLUSION

We modify the April 30 Order as follows: (i) where both Apple and a developer offer a purchase option, Apple may restrict the developer from placing its buttons, links, or other calls to action in more prominent fonts, larger sizes, larger quantities, and more prominent places than Apple uses for its own buttons, links, or other calls to action; (ii) Apple may restrict developers from using language that violates its general content standards, if such standards exist; (iii) Apple is not specifically enjoined from excluding developers participating in the VPP and NPP programs from simultaneously obtaining link access; and (iv) Apple is not enjoined from imposing a commission or fee on purchases that consumers make in an app utilizing iOS outside the Apple Store (a linked-out purchase) as permitted by the district

court on remand. The Injunction and April 30 Order otherwise remain in full effect.

We remand to the district court for the following: (i) to consider whether Apple's exclusion of VPP and NPP developers violated the Injunction, or whether it was necessary to protect or give life to the Injunction; and (ii) to amend the April 30 Order's commission prohibition as either a purgeable civil contempt sanction or properly tailored clarification or modification of the Injunction.

AFFIRMED in part, REVERSED in part, and REMANDED. Each side shall bear its own costs on appeal.

[781 F. Supp. 3d 943]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC., Plaintiff and Counter-Defendant,

v.

APPLE INC., Defendant and Counterclaimant.

Case No. 4:20-cv-05640-YGR

Signed April 30, 2025

ORDER GRANTING EPIC GAMES, INC.'S MOTION TO ENFORCE INJUNCTION;

DENYING APPLE INC.'S MOTION TO SET ASIDE JUDGMENT;

DENYING APPLE INC.'S MOTION UNDER FEDERAL RULE OF EVIDENCE 502(D);

DENYING APPLE INC.'S MOTION FOR ENTRY OF JUDGMENT ON ITS INDEMNIFICATION COUNTERCLAIM WITHOUT PREJUDICE; AND

REFERRAL TO THE UNITED STATES ATTORNEY RE CRIMINAL CONTEMPT

Re: Dkt. Nos. 876, 897, 1018, 1198, and 1328.

Yvonne Gonzalez Rogers, United States District Judge

I. OVERVIEW

For the reasons set forth herein, the Court **FINDS** Apple in willful violation of this Court's 2021

Injunction which issued to restrain and prohibit Apple's anticompetitive conduct and anticompetitive pricing. Apple's continued attempts to interfere with competition will not be tolerated.

By way of background, after a May 2021 trial between Epic Games and Apple, this Court issued a 180-page order which, in part, enjoined Apple's conduct impeding competition with respect to in-app and out-of-app purchases. On April 24, 2023, in a 91-page order, the Ninth Circuit affirmed. On January 16, 2024, the Supreme Court declined review. The next day, the Injunction issued.

Apple's response to the Injunction strains credulity. After two sets of evidentiary hearings, the truth emerged. Apple, despite knowing its obligations thereunder, thwarted the Injunction's goals, and continued its anticompetitive conduct solely to maintain its revenue stream. Remarkably, Apple believed that this Court would not see through its obvious cover-up (the 2024 evidentiary hearing). To unveil Apple's actual decision-making process, not the one tailor-made for litigation, the Court ordered production of real-time documents and ultimately held a second set of hearings in 2025.

To summarize: *One*, after trial, the Court found that Apple's 30 percent commission "allowed it to reap supracompetitive operating margins" and was not tied to the value of its intellectual property, and thus, was anticompetitive. Apple's response: charge a *27 percent commission* (again tied to nothing) on off-app purchases, where it had previously charged nothing, and extend the commission for a period of seven days after the consumer linked-out of the app. Apple's goal: maintain its anticompetitive revenue stream. *Two*, the Court had prohibited Apple from denying

developers the ability to communicate with, and direct consumers to, other purchasing mechanisms. Apple's response: impose *new* barriers and *new* requirements to increase friction and increase breakage rates with full page "scare" screens, static URLs, and generic statements. Apple's goal: to dissuade customer usage of alternative purchase opportunities and maintain its anticompetitive revenue stream. In the end, Apple sought to maintain a revenue stream worth billions in direct defiance of this Court's Injunction.

In stark contrast to Apple's initial in-court testimony, contemporaneous business documents reveal that Apple knew exactly what it was doing and at every turn chose the most *anti*competitive option. To hide the truth, Vice-President of Finance, Alex Roman, outright lied under oath. Internally, Phillip Schiller had advocated that Apple comply with the Injunction, but Tim Cook ignored Schiller and instead allowed Chief Financial Officer Luca Maestri and his finance team to convince him otherwise. Cook chose poorly. The real evidence, detailed herein, more than meets the clear and convincing standard to find a violation. The Court refers the matter to the United States Attorney for the Northern District of California to investigate whether criminal contempt proceedings are appropriate.

This is an injunction, not a negotiation. There are no do-overs once a party willfully disregards a court order. Time is of the essence. The Court will not tolerate further delays. As previously ordered, Apple will not impede competition. The Court enjoins Apple from implementing its new anticompetitive acts to avoid compliance with the Injunction. ***Effective immediately*** Apple will no longer impede developers'

ability to communicate with users nor will they levy or impose a new commission on off-app purchases.

II. THE INJUNCTION AND PRIOR JUDICIAL FINDINGS

After a full trial on the merits, this Court issued the Injunction. Key holdings of both this Court and the Ninth Circuit are summarized here.[1]

A. Trial, Judgment, and Injunction

After a bench trial, this Court entered judgment on September 10, 2021, finding that certain of Apple's anti-steering rules violate the California Unfair Competition Law ("UCL") under its unfair prong. With respect to the issues raised in these contempt proceedings,[2] most relevant here are the Court's prior determinations regarding (i) Epic's standing, (ii) Apple's "unfair" practices, (iii) injunctive relief, (iv) Apple's commission rate, and (v) Apple's indemnification counterclaim. *See Epic Games, Inc.*,

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[1] See Dkt. Nos. 812 and 813 (Rule 52 Order and Injunction), and 814 (judgment); *see also Epic Games, Inc. v. Apple Inc.*, 559 F.Supp.3d 898 (N.D. Cal. 2021) (Rule 52 Order), *aff'd in part, rev'd in part and remanded*, 67 F.4th 946 (9th Cir. 2023). As the Injunction concerns this Court's findings with respect to the UCL, the Court does not recite its findings with respect to Epic's other state and federal claims. For the Reader's Convenience, a table of contents is included as Attachment A.

[2] On March 13, 2024, Epic filed a motion to enforce this Court's injunction because Apple "is in blatant violation of this Court's injunction." (Dkt. No. 897.) Epic requests that this Court "enter an order (1) holding Apple in contempt for violating the Court's Injunction; (2) requiring Apple to promptly bring its policies into compliance with the Injunction; and (3) requiring Apple to remove all anti-steering provisions" in its developer guidelines." (*Id.*)

559 F.Supp.3d at 1051–58, 1065–66. The Court addresses each.

Standing. As to standing, the Court explained that "Apple does not dispute Epic Games' standing as a potential competitor: Epic Games wanted to open a competing iOS game store and could not. Because Epic Games would earn revenues from a competing store, it has suffered an economic injury." *Id.* at 1052. However, Apple challenged Epic's standing as a consumer. While the UCL distinguishes between "consumer" and "competitor" suits, "[t]here is no specific third category for non-competitor business." *Id.* Because "both parties' experts agree that developers like Epic Games jointly consume Apple's game transactions and distribution services together with iOS users," the Court held that "Epic Games has standing to bring a UCL claim as a quasi-consumer, not merely as a competitor." *Id.*

Unfair Practices. As to Apple's "unfair" practices under the UCL, the Court explained that Epic could demonstrate unfairness under either a "tethering" test or a "balancing" test. *Id.* at 1053. The "tethering" test required Epic to "show that Apple's conduct (1) 'threatens an incipient violation of an antitrust law,' (2) 'violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law,' or (3) 'otherwise significantly threatens or harms competition.'" *Id.* at 1052 (quoting *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 83 Cal.Rptr.2d 548, 973 P.2d 527, 544 (1999)). While the Court held that Epic's claims based on app distribution and in-app payment processing restrictions failed to state a claim of unfair practices, the Court held that Apple's anti-steering provisions were severable and constituted

unfair practices under the UCL. The core of the Court's finding was summarized succinctly as follows:

> **[T]he evidence presented showed anticompetitive effects and excessive operating margins under any normative measure. The lack of competition has resulted in decrease[d] information which also results in decreased innovation relative to the profits being made. The costs to developer are higher because competition is not driving the commission rate. As described, the commission rate driving the excessive margins has not been justified . . . .**
>
> Apple's own records reveal that two of the top three "most effective marketing activities to keep existing users coming back" in the United States, and therefore increasing revenues, are "push notifications" (no. 2) and "email outreach" (no. 3). Apple not only controls those avenues but acts anticompetitively by blocking developers from using them to Apple's own unrestrained gain. As explained before, Apple uses anti-steering provisions prohibiting apps from including "buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase," and from "encourag[ing] users to use a purchasing method other than in-app purchase" either "within the app or through communications sent to points of contact obtained from account registrations within the app (like email or text)." Thus, developers cannot communicate lower prices on other platforms either within iOS or to users obtained from the iOS platform. Apple's general policy also

> prevents developers from informing users of its 30% commission.
>
> . . .
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> In the context of technology markets, the open flow of information becomes even more critical. As explained above, information costs may create "lock-in" for platforms as users lack information about the lifetime costs of an ecosystem. Users may also lack the ability to attribute costs to the platform versus the developer, which further prevents them from making informed choices. In these circumstances, the ability of developers to provide cross-platform information is crucial. While Epic Games did not meet its burden to show actual lock-in on this record, the Supreme Court has recognized that such information costs may create the potential for anticompetitive exploitation of consumers. *Eastman Kodak [Co. v. Image Technical Services, Inc.]*, 504 U.S. [451] at 473–75, 112 S. Ct. 2072 [119 L.Ed.2d 265 (1992)].

Id. 1054–55 (footnotes omitted) (emphasis supplied).

The Court held that Apple's anti-steering provisions constituted an incipient violation of antitrust law by preventing informed choice among users of the iOS platform and violate the "'policy [and] spirit' of these laws because anti-steering has the effect of preventing substitution among platforms for transactions." *Id.* at 1055–56 (alteration in original) (quoting *Cel-Tech*, 83 Cal.Rptr.2d 548, 973 P.2d at 544).

The Court found that Epic likewise showed that Apple violated the UCL's balancing test. The "balancing" test, as contrasted to the tethering prong,

"requires the challenged business practice to be 'immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers' based on the court's weighing of 'the utility of the defendant's conduct against the gravity of the harm to the alleged victim.'" *Id.* at 1053 (quoting *Drum v. San Fernando Valley Bar Assn.*, 182 Cal.App.4th 247, 106 Cal. Rptr. 3d 46, 53 (2010)). Thus the Court found:

> In retail brick-and-mortar stores, consumers do not lack knowledge of options. Technology platforms differ. Apple created a new and innovative platform which was also a black box. It enforced silence to control information and actively impede users from obtaining the knowledge to obtain digital goods on other platforms. Thus, the closer analogy is not American Express' prohibiting steering towards Visa or Mastercard but a prohibition on letting users know that these options exist in the first place. Apple's market power and resultant ability to control how pricing works for digital transactions, and related access to digital products, distinguishes it from the challenged practices in *Amex.* [*See Ohio v. Am. Express Co.*, 585 U.S. 529, 549, 138 S.Ct. 2274, 201 L.Ed.2d 678 (2018).] . . . **Apple has not offered any justification for the actions other than to argue entitlement. Where its actions harm competition and result in supracompetitive pricing and profits, ...**

Id. at 1056–57 (footnotes omitted) (emphasis supplied).[3]

Injunctive Relief. "[T]he primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction." *Id.* at 1057 (quoting *In re Tobacco II Cases*, 46 Cal.4th 298, 93 Cal.Rptr.3d 559, 207 P.3d 20, 34 (2009)). A private party seeking injunctive relief under the UCL may request public injunctive relief, and federal courts apply equitable principles derived from federal common law for equitable relief under the UCL. *Id.* The Court found equitable relief was warranted:

> While Apple's conduct does not fall within the confines of traditional antitrust law, **the conduct falls within the purview of an incipient antitrust violation with particular anticompetitive practices which have not been justified. Apple contractually enforces silence, in the form of anti-steering provisions, and gains a competitive advantage. Moreover, it hides information for consumer choice which is not easily remedied with money damages. The injury has occurred and continues and can best be remedied by invalidating the offending provisions.** In terms of balancing, Apple's business justifications focus on other parts of the

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[3] Apple's "entitlement" perspective and mantra persisted beyond the Injunction. For example, Apple's Communications Director, Marni Goldberg, texted her colleague during the first evidentiary hearings, that "It's Our F***ING STORE." (CX-0244.38.) Not surprisingly (nor convincingly), she did not "recall" sending those messages. (Feb. 2025 Tr. 1817:5-9 (Goldberg).)

> Apple ecosystem and will not be significantly impacted by the increase of information to and choice for consumers. Rather, this limited measure balances the justification for maintaining a cohesive ecosystem with the public interest in uncloaking the veil hiding pricing information on mobile devices and bringing transparency to the marketplace.

Id. (emphasis supplied). Thus, because "Apple's conduct in enforcing anti-steering restrictions is anticompetitive," a "remedy to eliminate those provisions is appropriate. This measured remedy will *increase* competition, *increase* transparency, *increase* consumer choice and information while preserving Apple's iOS ecosystem which has procompetitive justifications." *Id.* at 1069 (emphasis supplied).

The Court also held that, irrespective of the appropriate market definition for Epic's antitrust claims, injunctive relief was warranted with respect to Apple's anti-steering provisions as to *all* apps, not just mobile gaming transactions. *See id.* at 1057–58.

Concurrent with the 180-page Rule 52 Order, the Court issued a one-page injunction that enjoined Apple's anti-steering provisions, and provided in relevant part:

> Apple Inc. and its officers, agents, servants, employees, and any person in active concert or participation with them ("Apple"), are hereby permanently restrained and enjoined from prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing [("IAP")] and (ii) communicating with

> customers through points of contact obtained voluntarily from customers through account registration within the app.

(Dkt. No. 813; *see also Epic Games, Inc.*, 559 F.Supp.3d at 1058.)

Commission. The Court explicitly found that "Apple's initial [commission] rate of 30% . . . has apparently allowed it to reap supracompetitive operating margins." *Id.* at 992. The rate was a historic relic not tied to intellectual property. Further, there was no actual commission charged for link-out transactions, then or in the past. The Court focused on Apple's anti-steering provisions, finding as discussed above, that a "remedy to eliminate those provisions is appropriate." *Id.* at 1068. That remedy, notably, would "not require the Court to micromanage business operations which courts are not well-suited to do as the Supreme Court has appropriately recognized." *Id.* at 1069. However, the Court warned that, with respect to Apple's commission rate, "Apple cannot hide behind its lack of clarity on the value of its intellectual property. Not all functionality benefits all developers. Further, . . . **Apple has actually never correlated the value of its intellectual property to the commission it charges**. Apple is responsible for the lack of transparency and whole-cloth arguments untethered to its rates do not ultimately persuade." *Id.* at 994 (emphasis supplied).

The DPLA and Indemnification. Apple asserted a counterclaim against Epic for a breach of the Developer Product Licensing Agreement ("DPLA") arising out of Project Liberty, the "highly choreographed attack" by Epic on Apple and Google,

Inc., that flouted the DPLA's obligations. *Id.* at 935–40, 1063. Epic admitted that it breached the DPLA and conceded that Apple would be entitled to relief if the Court found that the DPLA was enforceable and did not violate antitrust laws or public policy. *Id.* The Court held that "[b]ecause Apple's breach of contract claim is also premised on violations of DPLA provisions independent of the anti-steering provisions, the Court finds and concludes, in light of plaintiff's admissions and concessions, that Epic Games has breached these provisions of the DPLA and that Apple is entitled to relief for these violation[s]." *Id.* at 1063–64.

Apple also asserted a counterclaim against Epic for indemnification of attorneys' fees and costs defending this litigation and advancing counterclaims. *Id.* at 1065. Section 10 of the DPLA provides, in pertinent part, that Epic indemnify Apple for "any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys' fees and court costs . . . arising from or related to," among other things, Epic's "breach of any certification, covenant, obligation, representation or warranty in this Agreement." *Id.* at 1065. However, under *Alki Partners, LP v. DB Fund Servs., LLC*, 4 Cal.App.5th 574, 209 Cal.Rptr.3d 151, 171 (2016), this Court held that the DPLA lacked the "express language" required under *Alki* to find that the DPLA covered more than just third-party claims. *Id.* at 1065–66. As a result, Apple had "not shown that it [was] entitled to recover attorneys' fees and costs from Epic Games pursuant to Section 10 of the DPLA.

B. Ninth Circuit Affirmance in Part

On April 24, 2023, the Ninth Circuit affirmed this Court's holding with respect to the UCL and agreed that Epic had standing, Apple violated the "unfair" prong of the UCL, and injunctive relief was appropriate. *Epic Games, Inc. v. Apple Inc.*, 67 F.4th 946, 999 (9th Cir. 2023); Dkt. No. 852.[4] The Ninth Circuit reversed this Court, however, as to Apple's ability to recover attorneys' fees under the DPLA.

Standing. As to standing, the Ninth Circuit held that while Epic no longer has apps on Apple's app store,[5] Apple's anti-steering provisions caused injury to Epic via loss of its subsidiaries' earnings. *Id.* at 1000. Further, "Epic is a competing game distributor through the Epic Games Store and offers a 12% commission compared to Apple's 30% commission. If consumers can learn about lower app prices, which are made possible by developers' lower costs, and have the ability to substitute to the platform with those lower prices, they will do so—increasing the revenue that the Epic Games Store generates." *Id.*

Unfair Practices. As to the merits of Apple's UCL violations, Apple did not directly challenge this Court's application of the UCL's tethering and balancing tests, instead arguing that (i) the UCL's "safe harbor" doctrine insulates its liability because Epic failed to establish Sherman Act liability, and (ii)

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[4] The Court denied Apple's motion to stay the Injunction pending Apple's appeal to the Ninth Circuit. (Dkt. No. 830.) On December 8, 2021, the Ninth Circuit granted Apple's motion to stay the Injunction pending appeal. (Dkt. No. 841.)

[5] Apple declined to reinstate Epic's developer account after this Court held in its Order that Epic had breached the DPLA. *See Epic Games, Inc.*, 67 F.4th at 999.

two principles from Sherman Act case law preclude UCL liability. *Id.* at 1001–02. The Ninth Circuit rejected both. *First*, as to the safe-harbor doctrine, Apple failed to cite any case that "when a federal antitrust claim suffers from a *proof deficiency*, rather than a *categorical legal bar*, the conduct underlying the antitrust claim cannot be deemed unfair pursuant to the UCL." *Id.* at 1001. *Second*, the Supreme Court's decision in *Ohio v. Am. Express Co.*, 585 U.S. 529, 549, 138 S.Ct. 2274, 201 L.Ed.2d 678 (2018) is, simply put, distinguishable. *Id.* at 1002. Otherwise, Apple was incorrect that the UCL requires trial courts to conduct the "balancing" test within the relevant market. *Id.*

Injunctive Relief. With respect to injunctive relief, the Ninth Circuit held that this Court did not clearly err in finding that Epic's injuries were irreparable and that monetary damages would be inadequate, nor did this Court abuse its discretion to apply the injunction against *all* developers. *Id.* at 1002–03.

Commission Rate. Again, while not a part of the Court's UCL findings, the Ninth Circuit held that this Court did not clearly err in finding that Apple's 30% commission was supracompetitive under step one of the Rule of Reason, stating in relevant part:

> Apple attacks the supracompetitive-pricing finding on factual grounds by asserting that Apple charges a substantially similar commission as its competitors. That assertion is true as far as headline rates go, but the district court reasonably based its supracompetitive-price finding on effective commission rates instead of headline rates. The district court found Apple's reliance on

> headline rates to be "suspect" because, unlike the App Store, other platforms "frequently negotiate[ ] down" the rates they charge developers. The court noted that Amazon has a headline rate of 30% but an effective commission rate of 18%. And it credited testimony that game-console transaction platforms often "negotiate special deals for large developers." While the district court's finding that the Google Play Store (the App Store's "main competitor") charges a 30% rate seemingly undermines the characterization of Apple's commission as supracompetitive, we cannot say that the district court clearly erred absent evidence about the Google Play Store's effective commission—the metric that the district court at trial found to be the key to determining the competitiveness of a price in this market.

Id. at 984–85.

The DPLA and Indemnification. The Ninth Circuit affirmed Apple's win on its breach of contract counterclaim. "The parties agree[d] that Epic's illegality defense rises and falls with its Sherman Act claims," and because the court "affirm[ed] the district court's holding that Epic failed to prove Apple's liability pursuant to the Sherman Act," the court "also affirm[ed] its rejection of Epic's illegality defenses" to Apple's breach of contract counterclaim. *Id.* at 999.

However, the Ninth Circuit reversed this Court's "holding that the DPLA's indemnification provision does not require Epic to pay Apple's attorney fees related to this litigation." *Id.* at 1003. The Ninth Circuit held that the clause in the DPLA's indemnification provision which applied to Epic's breach of any obligation under the DPLA "rebut[ted]

the *Alki Partners* presumption" by specifically providing for attorneys' fees in an action on the contract. *Id.* at 1004. Thus, the Ninth Circuit held that Apple is entitled to attorneys' fees stemming from "intra-party disputes," however the court "express[ed] no opinion on what portion of Apple's attorney fees incurred in this litigation can be fairly attributed to Epic's breach of the DPLA, such that they fall within the scope of [that] clause." *Id.* at 1004 & n.24.

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On September 28, 2023, Apple filed a petition for writ of certiorari with the U.S. Supreme Court. (*See* Dkt. Nos. 862, 863; Petition for Writ of Certiorari, *Apple Inc. v. Epic Games, Inc.*, No. 23-344 (U.S. Sept. 28, 2023).) On January 16, 2024, the Supreme Court denied Apple's petition. (Dkt. No. 871-4, Ex. 20; *Apple Inc. v. Epic Games, Inc.*, No. 23-344 (U.S. Jan. 16, 2024).) The Ninth Circuit's mandate issued the next day (Dkt. No. 879), and the Injunction thus came into effect on January 17, 2024.

C. Apple's Purported Compliance

On January 16, 2024, Apple filed a notice of compliance with the Injunction. The major components included:

1. New policy charging developers 27% on link-out purchases instead of IAP's 30%. *See infra* Section II.A.
2. Various restrictions on the manner and mode of communicating with customers which were distinctly less user-friendly than those otherwise allowed. *See infra* Sections II.B–D.

3. Exclusions on the concurrent participation in other programs that offered discounted commissions, like the Video Partner Program and the News Partner Program. *See infra* Section II.E.

(Dkt. No. 871.)

D. Epic's Motion to Enforce the Injunction and Evidentiary Hearings

On March 13, 2024, Epic moved to enforce the injunction and hold Apple in civil contempt, and the latest stage of this saga began.[6] On April 23, 2024, the Court set a evidentiary hearing commencing on May 8, 2024. (*See* Dkt. Nos. 925, 974.) Over the course of six days, Epic called (i) Ned Barnes, Epic's expert witness; (ii) Matthew Fischer, Vice President, Head of Worldwide App Store at Apple; (iii) Alex Roman, Vice President of Finance at Apple; (iv) Alec Shobin, Director of Marketing at Epic; and (v) Benjamin Simon, CEO, president, and co-founder at Down Dog, a mobile app developer. (*See* Dkt. No. 931.) Apple called (i) Carson Oliver, Senior Director of Business Management, App Store; (ii) Philip Schiller, Apple Fellow; (iii) Alex Roman; (iv) Matthew Fischer; and (v) Ned Barnes. (*See* Dkt. No. 932.)

As testimony unfolded, and Apple attempted to justify its response, the Court became increasingly concerned that Apple was not only withholding critical information about its business decision for complying with the Injunction, but also that it had

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[6] The Court also granted the filing of *amici curiae* briefs in support of Epic's motion to enforce from Meta Platforms, Inc., Microsoft Corporation, X Corp., and Match Group, LLC (Dkt. No. 904); Spotify USA Inc. (Dkt. No. 906); and Digital Content Next (Dkt. No. 908.) (Dkt. No. 913.)

likely presented a reverse-engineered, litigation-ready justification for actions which on their face looked to be anticompetitive. The Court immediately ordered Apple to produce all injunction-compliance related documents (Dkt. No. 974), and referred all discovery matters to Magistrate Judge Thomas S. Hixson (Dkt. No. 985.) Judge Hixson later set a deadline for substantial completion of document production by September 30, 2024 (Dkt. No. 1008 at 2) and denied Apple's request for an extension (Dkt. No. 1017.)

Apple engaged in tactics to delay the proceedings. The Court later concluded that delay equaled profits. By September 30, 2024, Apple represented that it had produced around 89,000 documents out of the 1.5 million it had reviewed and expected to produce a few thousand more by October 7, 2024. (Dkt. No. 1024.) Apple, however, had asserted privilege over more than a third of responsive documents. (*See* Dkt. Nos. 1056, 1095.)

Magistrate Judge Hixson largely found Apple's privilege claims to be unsubstantiated after reviewing eleven exemplar documents (characterized by Epic as evidence of Apple's overreach). (Dkt. No. 1056.)[7] Apple used this decision to delay further and "offered" to re-review all 57,000 documents for which it claimed privilege in full or in part. Ultimately, Apple withdrew approximately 42.1% of its privilege claims. Although Apple now tries to recast its re-review as "of its own accord," that framing belies the reality that the documents should have never been withheld in

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[7] Later, on December 31, 2024, this Court upheld Judge Hixson's findings in full. (Dkt. No. 1095.)

the first instance. (Dkt. No. 1151 at 5–6.)[8] Ultimately, Epic and Apple hired three special masters to review Apple's privilege claims after its re-review. (*See, e.g.*, Dkt. No. 1191.)

Apple's production positions, after its dissembling at the evidentiary hearing, revealed that delay worked to its advantage. On February 4, 2025, the Court ordered that the evidentiary hearing would resume on February 24, 2025, and that the special master review and production of non-privileged documents to Epic would continue in parallel to the evidentiary hearing. (Dkt. No. 1171 at 2.)[9] The Court permitted the parties to designate priority documents for immediate review, with Epic selecting the first 1,000 documents for immediate review. (*Id.*)

During the three days of testimony in February 2025,[10] Epic called back to the stand Philip Schiller and Carson Oliver, and called for the first time Rafael Onak, User Experience ("UX") Writing Manager at

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[8] Including documents Apple identified as falling within Judge Hixson's ruling on the 11 exemplar documents—for which Apple maintains its claims of privilege—that number jumps to 55.9% of documents downgraded from Apple's original claims. (*Id.* at 6 & n.7.)

[9] At least as of January 31, 2024, the special masters upheld Apple's privilege claims on this reduced body of proposed redactions at a rate of approximately 89.1%, overruling in part as to 0.8%, and rejecting the balance as to 10.1%. (*Id.*)

[10] The transcripts of the hearing from May 2024 and February 2025 are consecutively paginated and cited as "May 2024 Tr." or "Feb. 2025 Tr." throughout. (*See* Dkt. Nos. 976 (May 8, 2024), 977 (May 10, 2024), 978 (May 16, 2024), 979 (May 17, 2024), 980 (May 22, 2024), 981 (May 31, 2024), 1306 (February 24, 2025), 1307 (February 25, 2025), 1308 (February 25, 2025 (sealed portion)), and 1309 (February 26, 2025).)

Apple; Kunnal Vij, Senior Manager of Finance at Apple Services; and Marni Goldberg, Corporate Communications Director at Apple. (*See* Dkt. No. 1273.) Apple called no witnesses. The evidentiary hearing preliminarily concluded on February 26, 2025.[11]

The Court sets forth the evidence and findings revealed through the hearings and evidence received.

III. APPLE'S 2024 RESPONSE TO THE INJUNCTION: COMPONENTS

Apple chose to comply with the Injunction with the following five categories of changes:

Apple imposed (A) a 27% commission on link-out purchases, (B) new external purchase link placement and design restrictions, (C) requirements that induce purchase-flow friction, (D) limitations on developers' ability to use calls to action, and (E) exclusion of certain programs utilized by large developers from the Link Entitlement.

The Court evaluates each in terms of whether Apple took reasonable steps to comply, and in fact has complied, with the Injunction.

A. First Component: Commission on Linked-Out Purchases

Prior to the Injunction, Apple did not allow "linked-out purchases" and, thus, did not charge any commission for purchases made outside of, or off, its platform.[12] Now, it does.

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[11] The Court left open the option of a further evidentiary hearing in the event the ongoing document review revealed the need for further hearings.

[12] *See* May 2024 Tr. 543:23–544:8 (Oliver) ("Historically, . . . we only commissioned the sale of digital goods and services

In its most simple configuration, "linked-out purchases" after the Injunction are purchases made off the Apple platform, but from which a consumer can leave the platform using a link on the app. Now, under the revised Guidelines, Apple not only charges developers "a 27% commission," but also expanded the scope of the commission requirement by demanding a 27% commission on digital goods and services transactions that take place on a developer's website upon immediate use of the link, *and* payment for any "digital goods and services transactions that take place on a developer's website within ***seven days after a user taps through*** an External Purchase Link . . . to an external website." (Dkt. No. 871-1, Declaration of Matthew Fischer ("Fischer Decl.") ¶ 33; *see also* CX-2, StoreKit External Purchase Link Entitlement Addendum for US Apps § 5.1 (emphasis supplied).)

Apple hid its decision-making process from the Court only to have it uncovered at the second evidentiary hearing in 2025:

Initial Discussions. Rolling the clock back, the Injunction issued Friday, September 10, 2021. On Monday, September 13, 2021, discussions began about the specific rate and under what circumstances a commission on external purchases should be charged, if any. Notes of a meeting that day describe

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that were sold directly within apps that were distributed through the App Store. For all other digital goods and services sold outside the App Store, there was no commission. And the basic principle there was that if we provided a user to a developer, that we were commissioned on those users that purchased . . . within the app, and where the developer was able to guide a user outside of the store to a sale of the digital goods or service, they were welcome to use that within their own app.").

three options for how to charge a commission and focused on linked-out purchases already required in Korea:

- One: "Do nothing but allow the separate payment methods in";
- Two: "Charge an alternative commission but audit"; and
- Three: "Charge on a different metric (downloads/redownloads) but cuts into different set of developers than we do today". (CX-202.1; Feb. 2025 Tr. 1399:2–18 (Oliver).)[13]

While the meeting was evidently focused on actions in Korea,[14] the notes indicate that "YGR's opinion needs to be taken into account; charging for commission - is it fine to do?!" and "YGR's decision - are we in a different place? Commission is ok under YGR but decision stated to allow Devs to link out to other payment methods." (CX-202.1; Feb. 2025 Tr. 1400:13–22 (Oliver).)

Thus, the Court finds it was immediately apparent to the Apple working group that the commission issue, including whether and how much, was core to compliance with the Injunction. Given the nature, length, and content of the Injunction, on which Apple

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[13] As Mr. Oliver confirmed, this second option—under which "Apple would allow alternative payments but seek a commission for the[ir] use"—is essentially the option Apple chose in Korea, the Netherlands, and in the United States. (Feb. 2025 Tr. 1399:16–1400:7.)

[14] *See also* Feb. 2025 Tr. 1398:4–6 (Mr. Oliver: "I remember this specifically related to one geography [Korea]. I don't . . . know if this project was covering multiple geographies or just one.").

is on notice, both constructive and actual, the working group's view is hardly surprising.

Apple coded its activities relating to Injunction compliance as "Project Michigan." (*E.g.*, Feb. 2025 Tr. 1323:7–11 (Onak).) When the Ninth Circuit issued its stay of the Injunction on December 8, 2021 (Dkt. No. 841), Apple appears to have ceased any compliance efforts. (*See* CX-486.1 (December 9, 2021 Email: "Michigan is on hold for now".).) Once the Ninth Circuit issued its decision affirming this Court's ruling in relevant part on April 24, 2023, Apple renewed its compliance efforts, this time under the codename "Wisconsin." (Feb. 2025 Tr. 1142:2–11 (Schiller); *see also* Dkt. No. 852 (Ninth Cir. opinion).)[15]

That information was hidden from the Court and not revealed until the 2025 hearing.

May 18, 2023 Meeting. On May 18, 2023, Messrs. Fischer, Oliver, Schiller, and Vij, among others, attended a meeting titled "Wisconsin Business Update." (CX-488.1.) An internal presentation proposed two options for achieving compliance with the Injunction. (CX-272.)

Proposal 1 would include *no* commission but would restrict the placement and appearance of links in purchasing flows. (*See* CX-272.7.) The "Key Risks" identified with Proposal 1 include that the proposal: "[d]iverges significantly from existing and future approaches"; "[c]reates new in-app channel for developers without commission"; "[r]equires Apple to review against multiple new policies and

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[15] On January 17, 2024, the Ninth Circuit's mandate issued, after the Supreme Court declined review. (Dkt. No. 879.)

restrictions"; and that "[r]eview cannot prevent all policy evasion, but will allow for remediation." (*Id.*)

Proposal 2, by contrast, permitted display placement "[a]nywhere, including merchandising page," with "[n]o restrictions" on pricing language but *would* include a "[d]iscounted commission" of 3% off its prior 30% rate, i.e., a 27% commission. (*See* CX-272.11.) Key risks identified with Proposal 2 included that: the "[c]urrent approach to collections is manual and will not scale"; and it was "[d]ifficult to estimate impacts of non-economic developer rationales (e.g. value of direct customer relationship)." (*Id.*)

Documents revealed that Apple believed Proposal 1's no-commission model would "be very attractive to developers," "cause a lot of developers to adopt the link[-]out options," and "would create competitive pressure on IAP," which in turn "would drive . . . spend outside of the app." (Feb. 2025 Tr. 1456:15–1457:23 (Oliver).) Mr. Oliver acknowledged, and understood, that creating this competitive pressure, which Apple identified as a key risk factor of Proposal 1, was one of the goals of the Injunction. (Feb. 2025 Tr. 1457:19–23 (Oliver).)[16]

Apple also considered the revenue impact of the commission and no-commission models, under various customer adoption scenarios. Under Proposal 1's no-commission model, Apple anticipated that most large developers and potentially many medium and

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[16] As to the risk that Option 1 "[d]iverges significantly from existing and future approaches" (CX-272.7), Mr. Oliver acknowledged that this risk encompasses the concern that if Apple adopted a no-commission approach on link-outs in the United States, it would be harder to justify a commission elsewhere in the world (Tr. 1453:22–1454:5).

small developers would offer link-out purchases to their users. (Feb. 2025 Tr. 1467:8–15 (Oliver).) As a result, Apple estimated a revenue impact of hundreds of millions to billions under the no-commission model for customer adoption ranging from 10% to 25%.[17] (*See* CX-272.10, .14.) By contrast, and importantly, for Proposal 2, Apple anticipated that a linked-out option subject to a 27% commission, at most, might only be attractive to the largest developers. (Feb. 2025 Tr. 1468:21–1469:2 (Oliver).) Specifically, the presentation focused on potential adoption by only the top 10 and 50 largest developers with 20% to 50% adoption, indicating potential revenue impact of tens of millions.[18] (CX-272.14.)[19] In short, Apple estimated, and both Messrs. Schiller and Oliver acknowledged, that as of May 2023 the revenue impact of a no-commission option with placement restrictions (Proposal 1) posed a significantly larger hit to Apple than the impact of a 27% commission option without placement restrictions (Proposal 2). (Feb. 2025 Tr. 1469:19–24 (Oliver); *id.* at 1162:16–24 (Schiller).)

Ultimately, Apple's 2024 response to the Injunction was the most anticompetitive option: a link entitlement program that included *both* the

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[17] More precisely, Apple estimated a revenue impact of [Redacted] million to [Redacted] billion.

[18] More precisely, Apple estimated a revenue impact of [Redacted] million to [Redacted] million.

[19] The slide presenting revenue impacts of a 27% commission focused on adoption by the top 10 and 50 developers, greying out the rows for top 200 developers and all developers because Apple expected that this option "would be only more attractive to the largest developers." (Feb. 2025 Tr. 1469:1–2; CX-272.13.)

placement restrictions of Proposal 1 *and* the 27% commission from Proposal 2. (*E.g.*, Feb. 2025 Tr. 1162:25–1163:4 (Schiller).)

Further, in May 2023, Apple through Oliver and others received feedback from Bumble, a large, well-known developer on Apple's and Google's alternative billing programs. (*See* CX-246.2; Feb. 2025 Tr. 1409:5–1411:9 (Oliver).)[20] Bumble specifically advised Apple that "[p]ayment processing fees average out significantly higher than the 4% fee reduction currently offered by Google in the [user choice billing] program or [the] 3% fee in Apple's . . . solution resulting in negative margin for developers." (CX-246.11.)[21] In other words, Bumble explained to Apple that a "3% discount" was not economically viable for a developer because the external cost of payments exceeds 3%. Apple's own internal assessment from February 2023 reflects data meriting the same conclusion—that the external costs of payments for developers on link-out purchases would exceed Apple's 3% discount if it demanded a 27% commission rate.[22]

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[20] While Mr. Oliver testified that he did not recall the document (Feb. 2025 Tr. 1410:12–24 (Oliver)), the email reflects that Bumble's slides were sent to him and at least 14 other members of Apple's legal, business, and finance teams (CX-246.1.)

[21] Bumble proposed as solutions to (1) "[v]ary fee rates to match payment method basis (e.g. credit card [Redacted], carrier billing [Redacted])" or (2) "[r]evise 4% global 'average' closer to developer's actualized average (e.g.[Redacted])". (CX-246.11.)

[22] *Compare* CX-246.11 (Bumble estimating developer's actualized average costs at [Redacted]), *with* CX-265.27 (Apple estimating external costs for "extra large developers" at

The evidence uncovered in the 2025 hearing demonstrated Apple's knowledge and expectation that the restrictions would effectively dissuade any real developer participation, to Apple's economic advantage.[23]

June 1, 2023 Meeting. Two weeks later, on June 1, 2023, Apple executives, including Messrs. Cook, Luca Maestri, Schiller, Fischer, and Oliver, held a meeting titled "Epic Injunction Implementation." (CX-485.1.) The presentation accompanying the meeting painted a clearer picture. One chart estimated revenue impacts to Apple based on potential commission discount (3%, 5%, 7.5%)[24] and link-out billings share (10-60%). (CX-859.32.) For the section of the chart covering 3% and 5% discounts, no revenue impacts were listed. Notably, the chart

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[Redacted] and external costs for "medium" sized developers at [Redacted]); *see also* Feb. 2025 Tr. 1627:15–1628:10 (Vij).

At the time, Apple also knew of the virtually nonexistent adoption rates of the Netherlands and Korea programs. Those, similar to the at-issue program, additionally suggested to Apple the non-viable economics of the proposed program. *See* Feb. 2025 Tr. 1407:1–5 ("Q. [F]or example, as of October 2022, ten months into the Netherlands program and four months into the Korea program, only one developer had signed up for alternative payments across the two programs. A. That seems roughly correct, yes.") (Oliver).

[23] Apple executive Alex Roman testified under oath that he did not look at comparables to estimate the costs of alternative payment solutions that developers would need to procure to facilitate linked-out purchases. That testimony is not believable. (May 2024 Tr. 266:22–267:11 (Roman).)

[24] As throughout, each discount reflects a discount from a 30% commission, i.e., a 3% discount results in a 27% commission, a 5% discount results in a 25% commission, and a 7.5% discount results in a 22.5% commission. Feb. 2025 Tr. 1638:15–17 (Vij).

simply notes that it "[m]ight not be economically viable for developer to shift" at those rates, irrespective of the link-out billings share." (*Id.*; Feb. 2025 Tr. 1638:18–1639:7 (Vij).)[25]

Crucially, at this point, Apple's notes reflect uncertainty about whether it could in fact impose a commission without violating the Injunction. In one slide deck, Apple's notes explain that "[i]f we decided *and had the ability* to charge a commission, we believe there would be very little developer adoption of link-

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[25] As to another option—Option 3, included in the presentation's appendix and which would provide a commission on linking out and a 0% commission on in-app text communications—the speaker notes explain that "[w]e ran the commission option through our developer decisioning model as well but this will likely not make economic sense for the vast majority of developers with the 3% discount. However, we know that the model is economic in nature and does not capture softer elements like customer relationship and developers ability to monetize in others [sic] ways they don't today with a transaction going through linking-out, hence we did a sensitivity." CX-859.55.

Additionally, Apple witnesses occasionally noted that their models reflected a commission imposed "in perpetuity," i.e., the look-back window for imposing a commission after a user clicks on a link is "perpetual," instead of the seven-day look-back window Apple in fact adopted. (*See, e.g.*, May 2024 Tr. 132: ("[T]o comply with the injunction, we have reduced the commission, you know, in the case of these larger developers, from 30 to 27, and added a seven-day [window]. So instead of having a 27 percent commission in perpetuity, it's just a 27 percent commission for these seven days. . . . [W]e expect that many, many transactions will take place after that seven-day window which would in essence bring that 27 percent rate much lower to around 18 percent.")) (Fischer). The testimony in February 2025 adduced no evidence to support Apple's contention that that it relied on a perpetual look-back window to consider its effective rate at 18%.

out, assuming a scenario where we would give a cost of payments discount at 3%." (CX-859.33 (emphasis supplied).) Those same notes indicate that Apple planned to "[c]ome up with a couple of models in the spectrum of what we think the judge will accept" but to "[s]tart with the minimum." (CX-1104.1.)

Apple's knowledge and consideration of these issues was hidden from the Court and not revealed until the 2025 hearing.

June 13, 2023 Meeting. Twelve days later, on June 13, 2023, the Project Wisconsin team met again, including Messrs. Fischer, Oliver, and Vij, this time to discuss three commission proposals. (CX-509.1; Feb. 2025 Tr. 1497:20–1498:3 (Oliver).) The meeting presentation indicated "[t]hree options for link-out pricing." (CX-274.3.) Option A concerned the "Standard Commission Discount," under which "Apple would discount the commission on link-outs based on cost of payments." (*Id.* at .4.) Option B involved a "Time-limited, Discounted Commission," where "Apple would charge a discounted commission for 1 year and then 0% thereafter." (*Id.* at .5.) Finally, Option C proposed a "Flat Affiliate Fee," where "Apple would charge a flat fee per customer tap-through on an in-app link-out." (*Id.* at .6.)

The presentation provided "Proposed Justifications" and "Considerations" of each option. Most relevant here is Option A, the commission structure Apple ultimately deployed.

To justify Option A, advocates inside Apple claimed that the developer "will still benefit from all of Apple's tools, technologies, and services, and only have to cover payments themselves at the end" and noted several reasons why Apple's "30% commission

[was] fair and defensible" (*id. at .4*), even though this Court and the Ninth Circuit had already found the rate was "supracompetitive."[26] Apple personnel noted, for example, "Steam charges 20-30%, but does not offer platform services" and "[t]he App Store is a premium, comprehensive, at-scale offering." (*Id.*)[27] The presentation final "consideration" notes did reveal that Apple believed "[d]evelopers will claim that a small discount will not provide enough margin to compete on price i.e. difficulties with Netherlands approach." (*Id.*)[28]

Additionally, notes of the meeting state that the team "need[ed] to come up with a session time

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[26] To remind: *see* quote, *supra*, at 956-57; *see also*, Injunction at 98 ("Apple's initial rate of 30%, although set by historic gamble, has apparently allowed it to reap supracompetitive operating margins."); Injunction at 92 ("As an initial matter, as detailed above, the 30% commission was not set by competition or the costs of running the App Store, but as a corollary to other gaming commission rates"); Injunction at 119 ("As described above, Apple has not adequately justified its 30% rate. Merely contending that its commission pays for the developer's use of the App Store platform, license to Apple's intellectual property, and access to Apple's user base only justifies a commission, not the rate itself. Nor is the rate issue addressed when Apple claims that it would be entitled to its commission even for games distributed outside the App Store because it provides the device and OS that brings users and developers together.")

[27] The slide, at least, fails to provide a basis for the value of the App Store's "premium, comprehensive, at-scale offering," other than that headline description.

[28] Mr. Oliver, for his part, could not recall any specific feedback from developers in this vein, but acknowledged that it "seems to be the reading from the bullet" that developers in the Netherlands complained about an insufficient price margin due to Apple's commission rate. (Feb. 2025 Tr. 1504:13–17 (Oliver).)

(~24-48hrs)," which refers to the lookback window that triggers a commission on a linked-out purchase. (CX-251.2; Feb. 2025 Tr. 1512:16–18 (Oliver).)

Apple's knowledge and consideration of these issues was hidden from the Court and not revealed until the 2025 hearing.

June 20, 2023 Meeting. Seven days later, on June 20, 2023, Apple held another meeting regarding implementing the Injunction. (CX-489.1.) At that point, Apple's go-live date for implementing the Injunction was July 5, 2023, only 15 days later. (Feb. 2025 Tr. 1176:2–5 (Oliver); *see also* CX-223.1.)

Prior to the June 20 meeting, there were individuals within Apple who were advocating for a commission, and others advocating for no commission. (Feb. 2025 Tr. 1521:3–12 (Oliver).) Those advocating for a commission included Mr. Maestri and Mr. Roman. (*Id.* 1522:3–10 (Oliver).) Mr. Schiller disagreed. (*Id.* 1521:13–18 (Oliver).) In an email, Mr. Schiller relayed that, with respect to the proposal for "a 27% commission for 24 hours," "I have already explained my many issues with the commission concept," and that "clearly I am not on team commission/fee." (CX-224.1.)[29] Mr. Schiller testified that, at the time, he "had a question of whether we would be able to charge a commission" under the Injunction, a concern which he communicated. (Feb. 2025 Tr. 1177:24–1178:9 (Schiller).) Unlike Mr. Maestri and Mr. Roman, Mr. Schiller sat through the entire underlying trial and

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[29] Regardless of whether Mr. Schiller's comment that he had a question of whether Apple could impose a commission under the injunction, this was only one of the "many issues" he alluded to. (*See* CX-224.1.)

actually read the entire 180-page decision. That Messrs. Maestri and Roman did neither, does not shield Apple of its knowledge (actual and constructive) of the Court's findings.

A businessperson at Apple explained the team's current thinking in a June 15, 2023 email and reveals a core decision. Apple has chosen not to value its intellectual property (the opening allowed by the Court in its Order) and does not want to relinquish its hold on this revenue stream:

> [T]he team has discussed variations on the commission options with lower rates, but we struggled to land on ironclad pricing rationales that would (1) stand up to scrutinizing comparisons with defenses of the commission and existing discounting approaches in other jurisdictions and (2) that we could substantiate solidly on a bottoms up basis without implicitly devaluing our IP / proprietary technology.
>
> . . .
>
> All things being equal, . . . a lower commission rate option doesn't represent a material improvement in the logical grounding relative to the 27%, continues to place the lion's share of the financial risk and calculus on Apple, and just makes us less money.

(CX-538.2–3; *see also* Feb. 2025 Tr. 1546:13–1550:20 (Oliver).)

Despite Mr. Schiller's concerns, the June 20, 2023 presentation forged ahead and identified benefits to several different commission/fee options, one of which was a 27% commission on transactions made within

24 hours of a customer's link-out. (CX-223.23.)[30] For that option, the presentation identified that the proposal "[r]educes financial risk versus no-fee option," which simply refers to the fact that Apple would generate more revenue under this option than a no-commission option. (*See* CX-223.32.)

In fact, documents revealed that not only would Apple generate more revenue, it would lose minimal to none: as Apple's earlier financial modeling had indicated, because developers' external costs will exceed 3% when utilizing linked-out transactions, Apple's 27% commission on linked-out transactions renders every linked-out transaction more expensive to a developer than an IAP transaction at 30% commission. (*See* Feb. 2025 Tr. 1633:5–10 (Vij) ("As long as there is a 27 percent commission on a linked-out transaction, that linked-out transaction is going to be more expensive to any developer and every developer based on this chart than an IAP transaction at 30 percent, correct? A. Yes, for that particular transaction.").) Ironically, the presentation then stated that this option "[p]rovides more margin opportunity for developers compared to standard IAP commission." (CX-223.32.)[31] While literally true in one sense, likely the outward facing/public sense—27% is less than 30%—Apple also knew that any such

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[30] Apple also considered imposing a flat fee per link-out or a 20% commission for the first year. CX-223.23.

[31] The identified "Risks" with the proposal were the same as previously described: developers "may claim" that the 3% discount does not permit price competition; the proposal diverges from planned alternative payment programs given its time duration; and there is a significant collection risk if linking-out adoption scales. CX-223.32.

opportunity vanishes in the face of external costs and thus was not viable for developers.

Despite the fact that the Court now has evidence that Apple investigated the landscape, knew how it would harm developers, and understood it would not comply with the goal of the Injunction, Apple nonetheless determined at the June 20, 2023 meeting that it *would* charge a commission on link-out purchases, although it had not yet decided what that commission would be. (Feb. 2025 Tr. 1227:16–23 (Schiller).)

Apple's knowledge and consideration of these issues was hidden from the Court and not revealed until the 2025 hearing.

June 28, 2023 Meeting. Seven days later, on June 28, Apple held another meeting regarding "Epic Injunction Implementation," this time attended by Mr. Cook, as well as Messrs. Maestri, Schiller, Fischer, and Oliver, among others. (CX-532.1.) The presentation accompanying the meeting indicates that the potential commission rate for linked-out purchases in the United States could range from 20% to 27%. (CX-291.14.) In her notes dated June 26, two days prior, Ms. Goldberg wrote, "[c]omission[:] 20-23 percent," but that "Luca [Maestri] wanted to make it 27 percent." (CX-399.1; Feb. 2025 Tr. 1797:5–1798:8 (Goldberg).)[32]

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[32] Ms. Goldberg does not clearly describe the context. (CX-399.) At any rate, she conceded that "I view these notes as my attempt to record what was being said in whatever conversation I was having." Feb. 2025 Tr. 1794:23–1795:4.

While Ms. Goldberg's opinions carry little to no weight, her real-time revelations provide context for the environment in which these decisions were being made. For instance, Ms.

Again, this was hidden from the Court and not revealed until the 2025 hearing.

July 5, 2023 Price Committee Meeting. One week later, on July 5, Apple held a Price Committee meeting to prepare for potentially imminent Injunction compliance. (Feb. 2025 Tr. 1242:24–1243:2 (Schiller).) One purpose of this meeting was to settle on the commission rate that Apple would charge and its associated tracking window. (*Id.* 1249:5–9 (Schiller).) At the meeting, Apple settled on a 27% commission for linked-out purchases, a decision ultimately made by Messrs. Cook, Maestri, and Schiller. (*Id.* 1202:15–1203:3 (Schiller).) As Mr. Schiller was not advocating for a commission, and Mr. Maestri was fully advocating for the lucrative approach, Mr. Cook was the tie-breaker. (*Id.* 1202:21–1203:12 (Schiller).) Commissions would be collected on a seven-day window, even if those subsequent purchases on a developer's website were made on a device other than the user's iPhone. (*Id.* 1136:24–1137:6 (Schiller), 1798:25–1799:13 (Goldberg).)

Thus, in response to the Injunction, Apple chose to impose a new commission representing the most anticompetitive option considered (Primary and Overarching Finding No. 1).

Goldberg showed her impressions of the potential bad press Apple may receive from charging a commission, as well as messages among her and others in the "Communications" department agreeing: "this is all very shaky to me" and that "the rationale and the defense for the commission rate [20%–27%] and the time period, the seven days, was shaky." *See* CX-0540.11; Feb. 2025 Tr. 1776:16–1777:1, 1856:8–11, 1858:11–24 (Goldberg).

Apple's knowledge and consideration of these issues was hidden from the Court and not revealed until the 2025 hearing.

Analysis Group Report. Apple hired the Analysis Group ("AG") purportedly to conduct a bottoms-up study, dated January 2024, which (1) "[e]stimate[d] the value of services provided by the Apple ecosystem to developers," (2) "[c]ompare[d] Apple's commission with those of other app stores and digital marketplaces," and (3) "[p]rovide[d] an economic framework for considering alternative pricing options." (CX-14.3; *see also* CX-15.) No references to the study appear in any of the materials upon which Apple relied in its meetings leading up to its July 5, 2023 decision to impose a 27% commission, although the presentation for that July 5, 2023 meeting does refer to an AG report.

Nonetheless, AG "estimated" that the value of Apple's technology and services to developers was precisely what the business groups had been debating. AG "concluded" that: (1) Apple's platform technology is worth up to 30% of a developer's revenue, depending on other services offered; (2) Apple's developer tools and services are worth approximately 3%–16%; (3) Apple's distribution services are worth approximately 4%–14%; and (4) Apple's discovery services are worth approximately 5%–14%. (CX-0014.7.) The AG report also considered the "[e]conomic framework for considering alternative pricing options," i.e., "[h]ow to charge a commission or fee for a purchase that happens after the user clicks a link that goes out of the app." (*Id.* at .38–39.) Further, the AG report identified affiliate programs and developer ad campaigns as a relevant benchmark for referral fees and observed that the tracking

windows in, e.g., first-party affiliate programs ranged between 14 and 90 days. (May 2024 Tr. 589:8–24, 591:23–592:1, 596:12–16 (Oliver); CX-0014.39–.41.)[33]

Despite its own considerable evaluation, during the first May 2024 hearing, Apple employees attempted to mislead the Court by testifying that the decision to impose a commission was grounded in AG's report. (*See, e.g.*, May 2024 Tr. 544:16–24 (Oliver); *see also* Dkt. No. 1324, Apple Trial Brief at 12.) The testimony of Mr. Roman, Vice President of Finance, was replete with misdirection and outright lies. He even went so far as to testify that Apple did not look at comparables to estimate the costs of alternative payment solutions that developers would need to procure to facilitate linked-out purchases. (May 2024 Tr. 266:22–267:11 (Roman).)

The Court finds that Apple *did* consider the external costs developers faced when utilizing alternative payment solutions for linked out transactions, which conveniently exceeded the 3% discount Apple ultimately decided to provide by a safe margin. (*See* CX-265.27 (Apple's estimates of external costs for developers); Feb. 2025 Tr. 1627:15–1628:10 (Vij) (discussing external costs).) Apple *did not* rely on a substantiated bottoms-up analysis

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[33] Epic argues that the AG's report is flawed because, among other reasons, the report relies on the Google Play store whose practices have been found in violation of antitrust law (*see* May 2024 Tr. 644:3–17 (Oliver)), and because Apple engaged in "creative accounting" that falsely implied Apple required external link commissions to make a fair return on the App Store, even though this Court has found that the App Store operates at a 75% margin (*see* May 2024 Tr. 225:15–226:14 (Oliver); Dkt. No. 1325-2, Epic's Post-Hearing Findings of Fact at 16).

during its months-long assessment of whether to impose a commission, seemingly justifying its decision after the fact with the AG's report.

Mr. Roman did not stop there, however. He also testified that up until January 16, 2024, Apple had no idea what fee it would impose on linked-out purchases:

> Q. And I take it that Apple decided to impose a 27 percent fee on linked purchases prior to January 16, 2024, correct?
>
> A. The decision was made that day.
>
> Q. It's your testimony that up until January 16, 2024, Apple had no idea what -- what fee it's going to impose on linked purchases?
>
> A. That is correct.

(May 2024 Tr. 202:12–18 (Roman).) Another lie under oath: contemporaneous business documents reveal that on the contrary, the main components of Apple's plan, including the 27% commission, were determined in July 2023.

Neither Apple, nor its counsel, corrected the, now obvious, lies. They did not seek to withdraw the testimony or to have it stricken (although Apple did request that the Court strike *other* testimony). Thus, Apple will be held to have adopted the lies and misrepresentations to this Court.[34]

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[34] The Court understands the technicality that a decision is not made until it is made, but this was not a seat-of-the-pants decision. Considerable work and debate had occurred. The evidence demonstrates that the decision had been made, and all things being equal, nothing would change. To suggest otherwise was to manifest an intent to mislead, misdirect, and lie.

B. Second Component: Link Placement and Design

Apple's restrictions on link placement and design come in two flavors: (i) where Apple limits placement of links for a linked-out purchase in the purchasing flow, and (ii) whether Apple permits a "button"-style link.

Initial Discussions. As outlined earlier, in May 2023, Apple initially considered two program proposals. Proposal 1 would include *no* commission but would restrict the placement and appearance of links in purchasing flows. (*See* CX-272.7.) As far as link placement, this generally means that if an app displays something for purchase, an IAP buy button could be placed next to that item, but the link-out option would have to be placed on another page in the app. (Feb. 2025 Tr. 1451:18–22 (Oliver).) Proposal 2, by contrast, permitted display placement "[a]nywhere, including merchandising page," with "[n]o restrictions" on pricing language but *would* include a 27% commission. (*See* CX-272.11.)

On its face, the Court finds the juxtaposition of the two proposals indicates that Apple considered imposition of a commission a trade off with the placement and appearance of a link. During testimony, Apple pushed back on the "trade off" characterization. Mr. Schiller explained that he didn't "recall us linking these two styles specifically to the discussion of fee or no fee. I recall us discussing them independently as what was the right thing to do and what's allowed to do." (Feb. 2025 Tr. 1182:12–15 (Schiller).) Mr. Oliver similarly demurred that he "recall[ed] specifically discussions about the commission level and discussions about the features

around implementation of linking out. . . . I don't remember them being discussed linked." (Feb. 2025 Tr. 1888:13–16 (Oliver).)

Yet, the side-by-side proposals evidence that the link placement and restriction served as an explicit offset to a lack of commission. Further, the June 1, 2023 presentation confirms that connection: in discussing one proposal, Apple indicates that, "[*s*]*ince* we are charging a commission, the link could be placed once per page, including alongside IAP." (CX-859.52 (emphasis supplied).) Notes of the meeting further confirm as much: "If you want to charge a commission, you have to give them better placement," but "[i]f you don't charge a commission, you need to lock it down to a plain url link and internet style 'button'." (CX-1104.2.) The notes also indicate the business team was tasked "to define the 2-3 scenarios where we can limit the ruling where Tim, Phil, and Legal are comfortable with." (*Id.* at .1.)

While Mr. Oliver claims he did not "exactly understand" what the notes "mean[ ] by 'limit the ruling'" (Feb. 2025 Tr. 1493:11–21 (Oliver)), the Court finds that the obvious inference to draw from these statements collectively is that, absent a commission, placement restrictions would "lock [the app] down" to protect Apple from an anticipated loss of revenue which would naturally spring from the competition the Injunction sought to stimulate. Mr. Schiller's lapse of memory on the topic does not control.

Revenue Impact. The June 20, 2023 presentation evidenced, and thereby confirmed, the same trade-off discussed above. Option 1 had no fee but included "more stringent restrictions on style and placement," specifically, the link would be "[o]nce per

page," "[n]ot on same page as Apple IAP buy flow," and a "[p]lain link or button." (Feb. 2025 Tr. 1179:16–19 (Schiller); CX-223.6.) Option 2, by contrast, imposed a "[c]omission or flat fee" but permitted a "[d]eveloper-styled link or button" and allowed the link to be on the same page as the Apple IAP buy flow. (CX-223.6; Feb. 2025 Tr. 1183:10–13 (Schiller).)

As to Option 1, the presentation explains that the "share of billings linking-out . . . will depend where is the text and language developers are allowed to use." (CX-224.16.) As Mr. Schiller acknowledged, the more restrictive Apple became on its suggested placement, format, and language of a link that a developer uses for a linked-out transaction, the less likely those links would be seen and used. (Feb. 2025 Tr. 1213:10–15 (Schiller).) More to the point, the more restrictive Apple's rules about how developers can format links, the lower a developer's link-out share and adverse impact on Apple's revenue. (*See* Feb. 2025 Tr. 1212:9–1213:22 (Schiller).)[35]

Here again, Apple ultimately chose the most aggressive, *anti*competitive option, namely to take the more restrictive elements of both options: Apple charged a commission as in Option 2, and it imposed

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[35] Mr. Schiller acknowledged this is true "[i]n theory." (Feb. 2025 Tr. 1213:17–22.) When pressed by the Court whether "if there is any other significant consideration, there will be some writing about it," Mr. Schiller speculated as to what Apple did *not* analyze, e.g., "whether color or font size or specific page placement or frequency" had a particular impact. (Feb. 2025 Tr. 1213:24–1214:5 (Schiller).) As noted at the hearing, if the consideration was not pursued and presented in the various meetings, or otherwise documented in the voluminous discovery produced, then it bears to reason it was not a particularly important consideration.

the more restrictive link placement and design requirements of Option 1 (Primary and Overarching Finding No. 2).

Friction in transactions matter. Apple modelled the revenue impact of a no-fee link-out purchase scenario based on breakage (i.e., percentage of purchases where a user fails to complete a link-out transaction) and the developer's link-out share (i.e., percentage of purchases diverted from IAP to a developer's external payment system).[36] (*See* CX-224.16.) Specifically, Apple's sensitivity analysis projected revenue impact where breakage ranged from 0%–25% and where link-out share ranged from 10%–50%. (*Id.*) The speaker notes indicate that, "[b]eyond [Redacted]%" breakage, "developers reach a tipping point where they lose more on linking out than they would sticking with Apple IAP and the higher commission" (*Id.*)

The sensitivity analysis projected that "[t]he range of impact on the low end with 25% breakage and 10% billings shift . . . is more negligible at $[Redacted]. However on the other end with 0% breakage and 50% billings shift . . . , it's closer to $[Redacted] of U.S. revenue that Apple would lose. A more middle ground scenario of 10% breakage and 30% billings shift would result in $[Redacted] of revenue loss, nearly [Redacted] of our U.S. App Store revenue." (CX-224.16.) As to what Apple expected an actual link-out share would be, the speaker notes explained that "we don't have great data points on what this will end up

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[36] In Apple's words, breakage refers to when a "customer drop[s] off during the buy-flow process due to a less seamless experience compared to Apple's iAP [sic]." (CX-224.15; *see also* Tr. 1631:20–22 (Vij).)

being," but pointed to instances where developers accomplished a [Redacted]% (NetEase) and [Redacted]% (Disney) shift in billings by offering discounted pricing *outside* the app store. (*Id.*) Notably, when Epic itself offered their own payment option with discounted pricing for a few weeks, Apple saw about [Redacted]% of billings shift. (*Id.*)

As early as the July 5, 2024 price committee meeting, the evidence is compelling that Apple had decided upon combining the most restrictive aspects of the June 20, 2023 proposal: impose both a commission *and* restrictions on link placement and design. (Feb. 2025 Tr. 1245:23–1246:24 (Schiller).) The link entitlement required developers to adhere to the following restrictions: "[l]anguage and design must follow templates"; "[o]ne URL per app"; "[l]ink can only be displayed once in an app, on an app page user navigates to (not an interstitial, modal, or pop up), and can't persist when user leaves page"; "[l]ink can not be displayed on any page that is part of an in-app flow to merchandise/initiate an IAP." (CX-227.4; *see also* Tr. 1497:7–19 (acknowledging Apple decided to "lock[ ] it down to a plain URL link and Internet-style button" and "restrict[ ] placement to make it outside of the buy flow") (Oliver).) Messrs. Cook, Schiller, and Maestri were the ultimate decisionmakers "about what they felt was [an] acceptable" level of risk to cabin the Injunction's effect in terms of link placement and design. (Feb. 2025 Tr. 1493:22–1494:3 (Oliver); *see also* Tr. 676:23–677:6 (Schiller).)[37]

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[37] May 2024 Tr. 676:23–677:6 (Schiller) ("Q. And were you the final decision-maker on the details and contours of the response plan that Apple announced on January 16? [Mr.

Link Placement Restrictions. Consistent with the July 5, 2023 price committee meeting presentation, Apple's final Link Entitlement program requires that an external link "[n]ot be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using in-app purchase." (CX-2.4; May 2024 Tr. 221:23–25 ("Q. The developer may not put the purchase link in their app anywhere near the purchase flow? A. That is correct.") (Roman); *id.* at 727:11–15 ("Q. . . . [T]he link must not be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using in-app purchase, correct? A. Yes.") (Schiller).)

That restriction presents serious problems for developers' ability to compete with Apple's IAP and Apple knew it. Consider a concrete example: if an app has an item shop where a user could purchase a digital product—e.g., an in-game outfit or currency—nowhere in that shop could the external purchase link appear. (May 2024 Tr. 93:21–94:7 (Fischer).) Rather, the external purchase link would have to be on some other page within the app. (*Id.* 94:8–13 (Fischer).) Epic's witness, app developer Ben Simon, represented that the inability to "present both options to the user on the same screen, as we did on Android . . . very much inhibits our ability to give users a choice in how to subscribe," and "is also likely to lead to user confusion, as it suggests that the two options are

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Schiller:] I was one of the decision-makers, not the only one. Q. Who were the other final decision-makers along with you? [Mr. Schiller:] Mr. Cook, Mr. Maestri, and there were other senior executives who were involved in the meeting and provided input, but I would say we were the primary approvers at the end.").

unrelated offerings." (Dkt. No. 897-1, Simon Decl. ¶ 28.)

When asked to explain the business justification of this requirement, Mr. Fischer first sidestepped by explaining that "the developer could easily, before they ever get to that page"—e.g., the in-app item shop—"communicate to the user of benefits and pricing discounts." (May 2024 Tr. 94:21–95:9 (Fischer).) When pressed further, Mr. Fischer alluded to "some concern around user confusion with having lots of different purchase options all in one place," but otherwise admitted that the requirement would be more profitable for Apple and less profitable for developers. (*Id.* 95:10–97:1 (Fischer).)

Additionally, based on his experience, Mr. Simon explained that "over two thirds of users who subscribe in-app do so when the purchase page is presented as a 'pop-up' after they create their account or after their trial has ended." (Simon Decl. ¶ 29.) As Mr. Schiller acknowledged, the most useful time for a user to know their purchase options is when the user is in the in-app store reviewing prices. (May 2024 Tr. 732:23–733:4 (Schiller); *see also* Injunction at 164.) However, that is precisely when Apple instructs developers that they *cannot* share alternative purchase information with users. (May 2024 Tr. 733:5–7 (Schiller).)

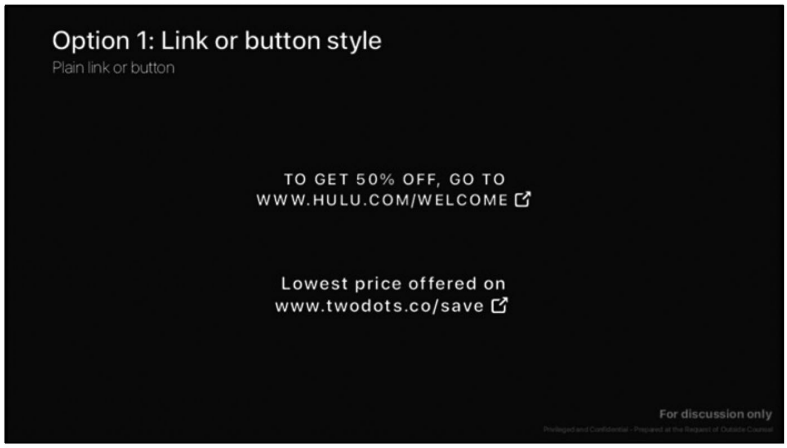
In its notice of compliance and at the May 2024 hearing, Apple claimed that restrictions on link placement protect against "security risks." (*See* Dkt. No. 871, Notice of Compliance at 6, 9–11; May 2024 Tr. 734:22–743:21 (Schiller).) Again, Apple attempted to mislead. Mr. Schiller asserted that having an external link appear on the same page as IAP can increase the risk of a user's exposure to fraudulent conduct. (May 2024 Tr. 735:20–24

(Schiller).) No real-time business documents credit that view. Mr. Schiller acknowledged that Apple does not permit developers to include an external link in an app under the Link Entitlement unless Apple first reviews and signs off on the link. (*Id.* 736:7–10 (Schiller).) Apple can sign off on an external link regardless of whether it was placed in the IAP purchase flow or elsewhere in the app. (*Id.* 736:11–14 (Schiller).) The link itself would be the same, and the only difference would be a user's perception and potential confusion. (*Id.* 736:15–17 (Schiller).) The confusion, Mr. Schiller explained, is that a user "may not understand which purchase method is not in-app purchase and which isn't." (*Id.* 737:3–7 (Schiller).) Yet, as Apple has structured the program, a user would nonetheless understand the external link directs them outside the app by virtue of Apple's scare screen informing them of such and the link's appearance as a hyperlink to an outside web page. (*See id.* 737:8–738:8 (Schiller).) Confusion is not a security risk. Given the lack of any document identifying this alleged concern, the Court finds these justifications pretextual; said differently, the proffered rationales are nothing more than after-the-fact litigation posturing or outright misrepresentations to the Court.

Link Design Restrictions. As to external link design, Apple's internal materials reflect awareness that the Injunction requires that "[d]evelopers must be able to . . . format these prompts as buttons or other calls to action, not just blue HTML links." (CX-272.5 (May 2023 presentation); *see also id.* at .4 ("Working assumptions of compliance plan" include "[f]lexibility of CTA [call-to-action] design, e.g. buttons.").) Yet, the Link Entitlement prohibits what

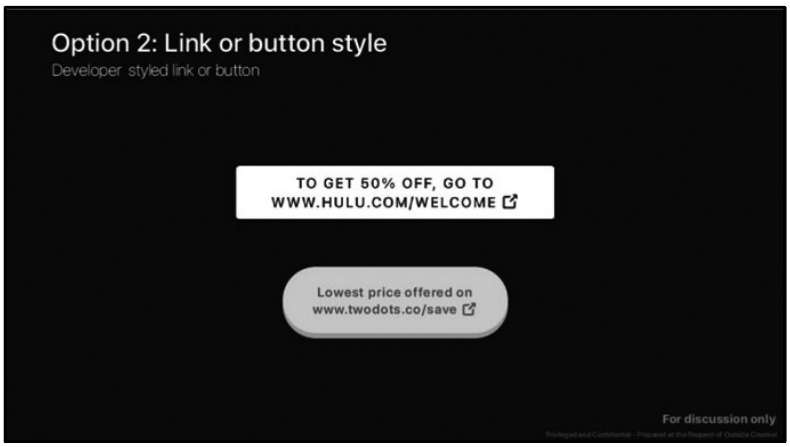
consumers would expect to see as a button. (May 2024 Tr. 82:18–23 (Fischer).) The *only* button Apple permits under its guidelines is what it refers to as the "Plain Button style," which "may not be enclosed in a shape that uses a contrasting background fill," but rather the "background surrounding text must match the background of [the] app's page." (CX-3.5.) A "link out icon provided by Apple must be displayed directly to the right of [the] website URL" and "must visually match the size of the text." (*Id.*)

The June 20, 2023 presentation highlights Apple's self-created distinction between a "link" or "button." Option 1, which did not include a commission or fee, presented the following options for a "plain link or button" style:



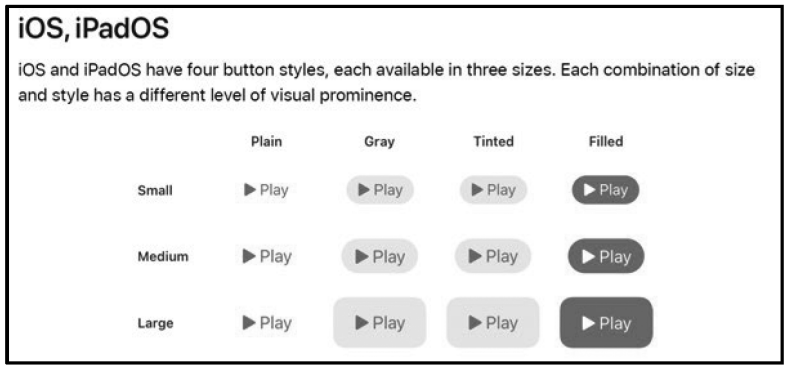
(CX-224.10.) Nothing about either example appears to be a "button," by the ordinary usage and understanding of the word. There is, certainly, an external-link icon next to the call to action and hyperlink, but Apple strains to call either of these strings of text a "button."

By contrast, Option 2, which would include a commission, presented the following "[d]eveloper styled link or button":



(*Id.* at .19.) The lower example is readily identifiable as a button.

Apple's witnesses acknowledged that the plain-link-style "button" is the least visually prominent of the button styles that Apple's guidelines provide:



(CX-16.3; May 2024 Tr. 76:15–77:5 (Fischer), 897:18–898:1 (Schiller); Feb. 2025 Tr. 1308:15–23 (Schiller).)

Understanding that developers use visually prominent buttons to attract users to click on a link (as recommended by Apple in other contexts), Apple's own witness Mr. Fischer testified that he could think of no other reason to require developers to use a plain-link-style "button" other than to stifle competition.[38]

Mr. Schiller, who sat through both sets of evidentiary hearings, attempted to reverse course on this admission, claiming that Apple required the plain-link-style button so that the external link would look like hyperlinks or other internet links that consumers are used to seeing, along with a link-out icon, which Apple also refers to as a "button". (Feb. 2025 Tr. 1166:15-1167:14 (Schiller).)[39] Yet, Apple prohibits developers from using what their consumers would expect to see as an actual "button." (May 2024 Tr. 82:18–23 (Fischer); *see also* Feb. 2025 Tr. 1531:4–1533:24 (Oliver).) At the end of the day, Apple's internal documents reflect the underlying motivation to stifle competition by cabining developers' ability to attract users to alternate payment methods: "How

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[38] May 2024 Tr. 83:15–22, 84:14–25 (Fischer) ("The Court: . . . When you were all talking about this, . . . was any rationale provided for requiring this, not suggesting it, but requiring it when you all know that what it will do is stifle competition? Any other reason given? Because if you cannot identify one, that's my assumption. [Mr. Fischer]: I don't remember exactly . . . . The Court: So the answer is no, you cannot think of any other reason for requiring that. [Mr. Fischer]: No.").

[39] The Court notes here that while, generally speaking, Mr. Schiller provided some credible testimony, he was in the courtroom to hear everyone testify. Thus, when he testified and attempted to rehabilitate the record, he is less credible and the Court discounts that testimony.

much can we limit what devs do with the text and links?" (CX-1104.2 (notes of June 1, 2023 meeting).)

C. Third Component: Purchase-Flow Friction

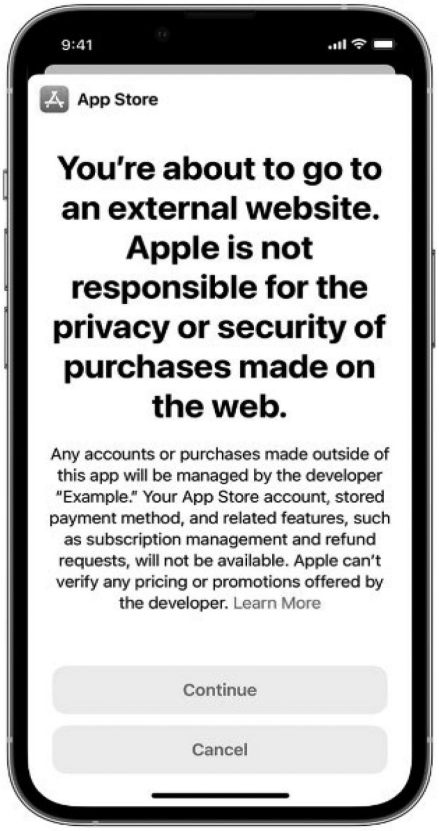
As discussed above, the June 20, 2023 presentation informed Apple executives that "[w]e know it's very likely that when a link-out happens, there will be some breakage, meaning [the] customer drop[s] off during the buy-flow process due to a less seamless experience compared to Apple's iAP [sic]." (CX-224.15; *see also* Feb. 2025 Tr. 1631:20–22 (Vij).) Apple understood, and used to its advantage, that the more friction in a purchase flow, the more breakage a developer faces. (May 2024 Tr. 70:23–71:16 (Fischer); Feb. 2025 Tr. 1644:17–20 (Vij).) Apple found that, "[b]eyond [Redacted]" breakage, developers reach a tipping point where they lose more on linking out than they would sticking with Apple IAP and the higher commission." (CX-224.16.) In other words, to stifle competition, Apple was modeling the tipping point where external links would cease to be advantageous for developers due to friction in the purchase flow. (Feb. 2025 Tr. 1211:14–19 (Schiller).)

Two aspects of Apple's Link Entitlement in particular increase purchase-flow friction for users attempting to conduct an external purchase outside of Apple's IAP: deploying a scare screen and requiring static URLs.

1. The Scare Screen

Apple deployed a warning message, referred to as a "scare screen," to deter users from using third-party payment options. Apple does not require developers selling *physical* goods to display any warning at all before users proceed to make a payment with a third-

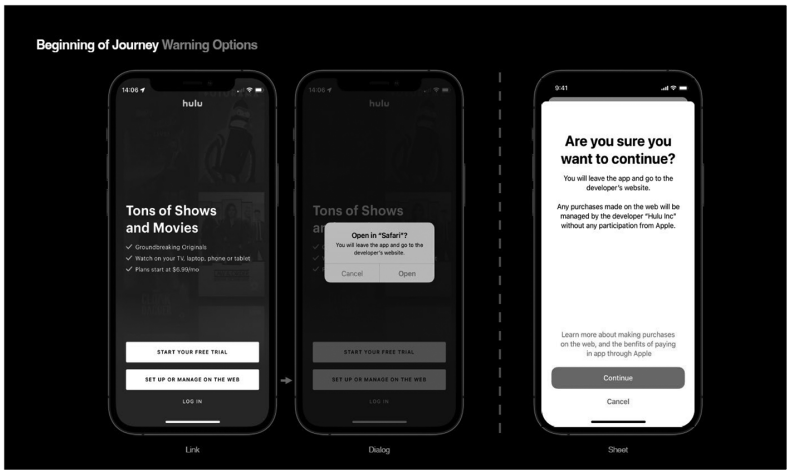
party payment solution. (May 2024 Tr. 70:9–13 (Fischer).) By contrast, Apple now requires developers selling *digital* goods to display an "[i]n-app system disclosure sheet"[40] when a user links-out to a third-party payment solution:



[40] The "[i]n-app system disclosure sheet" explained that "[e]ach time your app calls the StoreKit External Purchase Link API, it will surface a disclosure sheet provided by the system (iOS 15.4 and/or iPadOS 15.4 or later) that explains to the user that they'll be leaving the app and going to an external website to make a purchase through a source other than Apple. When a user taps the Continue button, they will be directed to your website within a web browser." (CX-3.5.)

CX-3.5; May 2024 Tr. 70:14–18 (Fischer).)

Two months after the Injunction issued, Apple began evaluating options for its warning screen. In an appendix to a draft November 15, 2021 Apple presentation, Apple details three different "[w]arning Options," involving escalating levels of warning messages, presumably as exemplars to show customers as part of the link-out flow under consideration. (CX-520.39; Feb. 2025 Tr. 1333:18–23 (Onak).)



CX-520.39.) The screen on the left is called a "link," where the user would simply be taken directly to the external site. (Feb. 2025 Tr. 1333:25–1334:17 (Onak).) The middle screen is called a "dialogue," which generates a small pop-up after a user clicks on an external link that communicates to the user they are leaving the app. (*Id.*; *also id.* 1335:10–16 (Onak).) The screen on the right is called a "sheet," which is a full screen takeover after the user clicks on an external link. (*Id.* 1333:25–1334:17 (Onak).) Moving

left to right, the warning level to the user increases. (*Id.* 1335:3–6 (Onak).)

Again, Apple chose the most anticompetitive option, namely the full screen takeover. (*Id.* 1335:7–9 (Onak).); (Primary and Overarching Finding No. 3)

In Slack communications dated November 16, 2021, the Apple employees crafting the warning screen for Project Michigan discussed how best to frame its language. (CX-206.) Mr. Onak suggested the warning screen should include the language: "By continuing on the web, you will leave the app and be taken to an external website" because "'external website' sounds scary, so execs will love it." (*Id.* at .2.) From Mr. Onak's perspective, of the "execs" on the project, Mr. Schiller was at the top. (Feb. 2025 Tr. 1340:4–6 (Onak).) One employee further wrote, "to make your version even worse you could add the developer name rather than the app name." (CX-206.4.) To that, another responded "ooh - keep going." (*Id.*)

Again, Apple decided on the most anticompetitive option, that is, the "even worse" option of including the developer's name rather than the app name (Primary and Overarching Finding No. 4). (Feb. 2025 Tr. 1343:23–1344:1 (Onak); CX-3.5.) All of this was hidden from the Court and not revealed in the May 2024 evidentiary hearings.

From 2021 to 2023, while this Court's Injunction was stayed, Apple employees also worked on warning screens for similar compliance requirements imposed in other jurisdictions, including the Netherlands and Japan.[41] In a January 2022 email, Mr. Schiller was

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[41] The Netherlands Authority for Consumers and Markets ("NACM") had issued a ruling requiring Apple to make changes

asked for feedback on "In App Messaging - link out", and he responded: "This is not good. This is a big warning that the user is about to be sent out of the app to a website. I do not think the headline should say 'continue', this is a warning that the user is about to go out to the web, and are they sure they want to do that, we cannot verify that anything that occurs on the web is private and secure. The default button should not be 'continue'." (CX-268.11.) In response, an employee confirmed that "[w]e updated the title and the copy to be super clear on what is about to happen and have more of that warning tone." (*Id.* at .10.)

On March 15, 2022, Apple held a meeting to discuss the warning screen for the Netherlands and Japan response, which included Messrs. Schiller and Onak. (CX-496.1.) Immediately afterwards, employees developing the warning screen language had a debrief over Slack to discuss how to implement Mr. Schiller's comments. (Feb. 2025 Tr. 1355:13–22 (Onak); CX-281.) They also discussed how to make the language "scarier." One employee said some of the draft language "feels safe . . . like, don't worry, you're still within the app and it's just guiding you somewhere else right now." (CX-281.2.) Rather, the

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to allow for alternative purchase mechanisms for dating apps. Feb. 2025 Tr. 1325:6–19 (Onak). Apple's work in response to the NACM's ruling was referred to as "[Redacted]." *See* CX-268.1; CX-281.5; Feb. 2025 Tr. 1357:24–1358:9 (Onak). Similarly, Apple was developing language for screens presented to users linking out for reader apps, in response to a Japanese Fair Trade Commission investigation. Feb. 2025 Tr. 1326:2–10 (Onak). Apple's work in response to the Japanese FTC's investigation was referred to as "[Redacted]." *See* CX-281.5; Feb. 2025 Tr. 1357:24–1358:9 (Onak).

language should sound like users are sent "into the great wide open." (*Id.*) Mr. Onak commented that "if we want to 'scare' users a bit, i like the addition of 'out' because it raises questions and hesitancy haha. out? out where? omg what do i do?" (CX-281.3.)

Mr. Onak testified that "in term of UX writing, the word 'scary' doesn't . . . mean the same thing as instilling fear." (Feb. 2025 Tr. 1340:10–12 (Onak).) Rather, "scary" is a term of art that "means raising awareness and caution and grabbing the user's attention." (Feb. 2025 Tr. 1340:13–15 (Onak).) Mr. Onak repeatedly asserted that the team's goal was simply "to raise caution so the user would have all the facts so that they can make an informed decision on their own." (Feb. 2025 Tr. 1340:22–1341:2 (Onak).) Mr. Onak's testimony was not credible and falls flat given reason, common sense, and the totality of the admitted exhibits. The designers' discussions contextualize their use of the word "scary" to indicate its ordinary meaning and, most applicable here, indicate the goal of deterring users as much as possible from completing a linked-out transaction. Apple repeatedly acted to maintain its revenues and stifle competition. This was no exception. His attempts to reframe the obvious meaning of these communications do not persuade. All of this was hidden from the Court and not revealed in the May 2024 evidentiary hearing.

After the June 20, 2023 meeting regarding this Court's Injunction, Apple decided that it would implement a full screen warning after users click on an external link, regardless of which commission option was ultimately selected. (Tr. 1180:12–19 (Schiller); CX-223.7.) At the meeting, Mr. Cook "asked the team to revise the customer warning

screen . . . to reference the fact that Apple's privacy and security standards do not apply to purchases made on the web." (CX-225.1.) The team updated the warning screen, sent it to Mr. Schiller for approval, and returned the revised copy to Mr. Cook on June 23, 2023. (*Id.*) The updated warning screen changed a sentence from "You will no longer be transacting with Apple" to "Apple is not responsible for the privacy or security of purchases made on the web." (Feb. 2025 Tr. 1266:12–18 (Schiller); CX-225.2.) As Ms. Goldberg's notes reflect, the idea discussed was that this "[i]nterstitial . . . tells ppl its dangerous and they are leaving the app store." (CX-399.1; Feb. 2025 Tr. 1810:5–24 (Goldberg).)

The presentation for the June 28, 2023 meeting reflects Mr. Cook's revision (*see* CX-291.5 ("Tim, based on your feedback, here is the System disclosure sheet with the updated copy on the right.")), and is included in the final version of the warning screen that Apple adopted (Feb. 2025 Tr. 1267:19–23 (Schiller)).[42] This "system disclosure sheet" pops up for every single user that clicks on an external link, and for every single instance that a user clicks on any external link, not just the first time. (CX-3.5; May 2024 Tr. 725:8–14 (Schiller).) Further, these chilled consumer conduct, especially given the use of other informative "warning screens," like those asking to track a user's activity across companies' apps and websites. That information is not a "trivial" ask, but by Mr. Fischer's admission, those "warnings" cover only a third or less than half of the screen, this one

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[42] The final version adds an additional sentence absent from the June 28, 2023 version in small font: "Apple can't verify any pricing or promotions offered by the developer." (CX-3.5.)

covers the entire screen. (CX-3.5; May 2024 Tr. 44:11–45:12 (Fischer).)

2. Static URLs

A static URL is a web address that "simply is a specific place that the user is going to be sent to." (May 2024 Tr. 811:12–18 (Schiller).) By contrast, a dynamic URL "can change"—it "can send a user to different places." (*Id.* 811:21–24 (Schiller).) "[E]ven if it doesn't . . . a dynamic URL can attach parameters, data, to the URL," which can include information "like user identity, geolocation," or "[s]ession information about what the user's been doing, to pass along to that website." (*Id.* 811:24–812:17 (Schiller).) For the Link Entitlement program, Apple requires developers to use static URLs for external links. (*Id.* 813:3–5 (Schiller).)

As explained by Epic's witness, Mr. Simon, static URLs can introduce friction in a purchase flow where dynamic URLs do not. Increased friction decreases competition. For instance, a dynamic link can identify the user and automatically log that user into their account after clicking the link. (May 2024 Tr. 953:8–23 (Simon).) For a static URL, however, a user would have to log in before making a purchase. (*Id.* at 954:20–25.)[43] As Mr. Simon attested, some users on the fence about a purchase may decide to stop pursuing the transaction at that point. (*Id.* at 954:25–

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[43] That said, as Mr. Schiller explained, users can use Apple's key chain or password management tool so that the user automatically fills in their credentials and "[e]very subsequent visit [the site] will remember that and you will be logged in," as long as a user utilizes those tools. (May 2024 Tr. 813:17–814:9 (Schiller).)

955:2.)[44] He also indicated the static URL can create user confusion—some users may feel frustrated "because they feel misled about having purchased . . . in the app without knowing about the other [cheaper] options." (*Id.* at 959:6–8.) Or a user may accidentally log in to or create a different account, purchasing the product for the wrong account. (*Id.* at 955:3–8.)[45]

As with the other restrictions discussed above, Apple claimed the static URL requirement protects users' security and privacy. Mr. Schiller explained that a static URL "keeps the URL from being used to pass along information about the user without their knowledge from the app out to the website. It has nothing to do with sending them to a page to find pricing. It's about passing along parameters like their demographics." (May 2024 Tr. 813:6–14 (Schiller).) Yet, despite these concerns, developers can program dynamic links for any other purpose—Apple in general only prohibits the use of dynamic links for external links for link-out purchases. (*See* May 2024 Tr. 90:8–17 (Fischer), 881:3–6 (Schiller), 952:16–19 (Simon).) In fact, "any app that's connected to the internet doing anything nontrivial is going to have to use dynamic URLs." (May 2024 Tr. 957:3–20 (Simon)

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[44] Chatter among Apple's UX design team reveals agreement. As one employee said, "i think personally that is why i wouldnt bother"—"more steps, have to find my card, type it all out. and then giving another company my details." (CX-206.4.)

[45] As Mr. Simon explained, after clicking a static URL, users may "log in or create an account with a different email address, which happens more often than you might think, in which case they would purchase for the wrong account, return to their mobile app, not have access, and usually that leads to them reaching out to our customer support." May 2024 Tr. 955:3–8 (Simon).

(explaining developers' various uses of dynamic URLs in-app).) Thus, according to Mr. Simon, "[i]f dynamic URLs are a security risk," then "all of iOS is a security risk because the platform gives you every ability to make Internet requests with dynamic URLs." (*Id.* 957:21–958:2 (Simon).)[46]

Apple understood well that breakage increases with additional friction in the purchase flow (*see* Feb. 2025 Tr. 1643:4–8 (Vij); CX-224.16) and capitalized on that option. Documents reveal that Bumble informed Apple in a May 2023 presentation that one additional step in Google's three-screen User Choice Billing system resulted in an approximately [Redacted]% drop-off rate for customers in a link-out transaction. (CX-246.12.)

Again, here, the Court finds that Apple chose the most anticompetitive option to reduce the efficacy of external link-outs that compete with IAP (Primary and Overarching Finding No. 5).

D. Fourth Component: Limitations on Calls to Action

Under the final component of the Link Entitlement program, Apple prohibits developers from using calls to action other than the text of external links. (*See* CX-3.5.) Even when using an external link, a developer "must match the template language" that Apple provides—e.g., the "purchase template" requires a develop to say "Purchase from the website at www.example.com". (*Id.*) That

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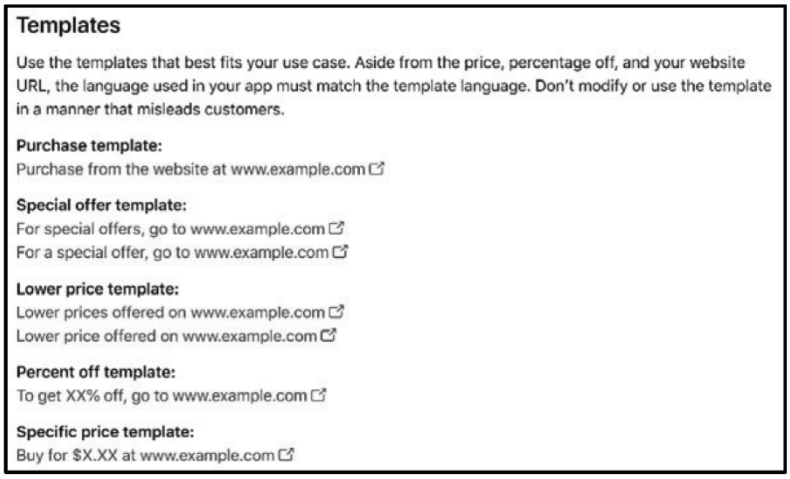
46 *See also* May 2024 Tr. 958:3–5 (Simon) ("Web browsing also, every web page has dynamic URLs on it. So I think all of the Internet would sort of have to be a security risk for dynamic URLs to be a security risk.").

statement—one of five templates which constitutes the external link for a link-out—is the entirety of the call to action that developers may use. (May 2024 Tr. 85:21–25 (Fischer).)



Templates

Use the templates that best fits your use case. Aside from the price, percentage off, and your website URL, the language used in your app must match the template language. Don't modify or use the template in a manner that misleads customers.

Purchase template:
Purchase from the website at www.example.com

Special offer template:
For special offers, go to www.example.com
For a special offer, go to www.example.com

Lower price template:
Lower prices offered on www.example.com
Lower price offered on www.example.com

Percent off template:
To get XX% off, go to www.example.com

Specific price template:
Buy for $X.XX at www.example.com

(CX-3.5.)

A developer cannot use words beyond those provided in the templates to communicate with users about external purchase availability. (May 2024 Tr. 85:25–86:3 (Fischer).) A developer cannot say something like "buy cool new stuff over here," or "unlock new and special subscription content only when you [subscribe] on our website." (*Id.* 86:4–10 (Fischer); *see also* Tr. 958:8–12 (Simon).) If a developer wanted to compete on price not by offering lower prices but by offering other products or benefits on the web, there is no way to communicate that to a user in-app. (May 2024 Tr. 86:14–18 (Fischer).) Apple is aware that, absent these restrictions, developers *would* like to include calls to action directing users to their websites, including through text without a link if the developer can do so without

paying a commission to Apple. (*Id.* 107:21–108:1 (Fischer); Feb. 2025 Tr. 1883:3–7 (Schiller).)

Despite testimony to the contrary,[47] some working on Project Wisconsin did consider permitting unlinked and unrestricted calls to action with no commission as to calls of action. The appendix to the June 1, 2023 presentation given to Mr. Cook includes an Option 3, which would provide for a commission on linking out with "0% Commission on In-App Text Communications." (CX-859.54.) Option 3 would "introduce[ ] . . . the additional information allowed to be presented but without a link to customers as mentioned where we would not charge a commission." (*Id.*) In this scenario, Apple assessed "the incremental impact that may happen as more customers might migrate to the web with this additional information being presented to them." (*Id.*) Apple estimated that, if in-app text communications caused 5% migration to the web, Apple would lose hundreds of millions ($[Redacted]) in revenue. (*Id.*) On the high end, at 25% migration, Apple would lose over a billion ($[Redacted]) in revenue. (*Id.*) As Mr. Schiller acknowledged, Apple recognized—at least from Mr. Barton and the finance

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[47] Before this Court required that the June 1, 2023 presentation be produced, Mr. Schiller testified that "we didn't consider . . . that developer would want to not include a link with their call to action . . . . It just hadn't crossed our mind that somebody would want that." (Tr. 1309:21–1310:2 (Schiller); *see also id.* at 1882:24–1883:2.) He qualified that "of course that's something we'd be happy to consider." (Tr. 1309:25–1310:1 (Schiller).) When shown the presentation, Mr. Schiller acknowledged that the presentation, albeit in an appendix, does discuss in-app text communication without a link and without commission, although he still did not recall the discussion. (Tr. 1890:13–20 (Schiller).)

team, who were designated to present Option 3—that unlinked and unrestricted calls to action could foster competition against Apple's IAP by causing customer migration to developer websites. (Feb. 2025 Tr. 1891:18–1892:2 (Schiller); CX-859.54.)

Again, Apple chose the most anticompetitive option (Primary and Overarching Finding No. 6).

E. Program Exclusions

In creating the Link Entitlement program, Apple specifically excluded certain developers, namely those in Apple's Video Partner Program ("VPP") and its News Partner Program ("NPP"). (May 2024 Tr. 261:23–262:1 (Roman).) Those programs have a standard commission rate of 15%, rather than IAP's 30% commission. (*Id.* at 262:2–4.) Under the new rule, if a subscription video app like Disney+ or a newspaper publisher like the New York Times uses external purchase links in their app, they will no longer be eligible for the VPP or NPP 15% commission rate and would be subject to the standard 30% IAP commission for all in-app purchases. (*Id.*) Said differently, and simply, including an external purchase link in their app doubles their commission rate. (*Id.* at 262:11–13.)

In December 2022, Apple considered how to treat programs including VPP and NPP in the event Apple would need to change its business model to meet the requirements of the Digital Markets Act, a European Union regulation. (Feb. 2025 Tr. 1724:8–18 (Vij); CX-231.) The presentation notes that, among other benefits to Apple, VPP and NPP "can serve as a tool for retaining developers exclusively on Apple IAP." (CX-231.8.) This is because the effect of losing program benefits—the lower commission rate—

makes choosing alternative payments more costly given the commission rate increases to Apple's standard IAP commission. (*See* Feb. 2025 Tr. 1730:7–21 (Vij).)

Apple repurposed its EU analysis for the June 28, 2023 presentation regarding this Court's injunction. (*Compare* CX-231.8 *with* CX-291.13.) This time, no reference is made to how the exclusion can serve as a tool for IAP retention, noting instead that excluding VPP and NPP developers from the Link Entitlement "[r]equire[s] participants to maintain high bar of user experience and ecosystem integration aligned with partner program goals" and there would be a "[l]imited number of developers impacted." (CX-291.13.) At the same time, Apple believed that very large developers like those participating in VPP and NPP were the most likely to use linked purchases if Apple charged a commission. (Feb. 2025 Tr. 1722:2–14 (Vij).) Apple acknowledged that excluding these developers from the program would deter adoption of link-out purchases in the United States, because link-outs would be much more costly due to the commission rate doubling from 15% to 30%. (*Id.* 1733:2–15 (Vij).) To underscore this reasoning, the presentation for the June 20, 2023 meeting with Mr. Cook provides data projecting that Apple would lose more revenue if developers participating in VPP or NPP were still eligible for program discounts. (*Id.* 1218:17–1221:7 (Schiller).)[48]

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[48] *Compare* CX-224.30 (revenue impact with "[l]ink-out billings not eligible for program discounts") *with id.* at CX-224.33 (revenue impact where "[l]ink-out billings are eligible for program discounts). On their face, the revenue difference is minimal. However, Mr. Schiller agreed that because the

Apple workshopped how to articulate the rationale for VPP and NPP program exclusion from the Link Entitlement. Notes from a June 26, 2023 Project Wisconsin meeting indicate that Mr. Vij was slated to present on "Program Eligibility" and that the team wanted a "more nuanced way to write our positioning here," floating the idea that they "want to maintain a high bar of user experience for participants." (CX-506.3.) Yet, on June 28, 2023, Mr. Vij messaged Mr. Oliver that he thought "our argument on vpp npp is weak" and acknowledged "[o]n VPP and NPP the argument on the high bar can be made with the discount as well." (CX-511.2, .5.) Mr. Oliver responded that he did not "think it's the same" and that "VPP and NPP are unique programs that have specific requirements to ensure a distinct user experience on Apple's platforms." (CX-511.6.) Thus, even though the program eligibility slide in the June 28, 2023 presentation was pulled from the EU presentation that indicated VPP and NPP exclusion could serve as an IAP retention tool, the slide used for Project Wisconsin presents Mr. Oliver's rationale instead and scrubs any mention of the retention benefits for excluding VPP and NPP. (CX-505.16.)[49]

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revenue impact projections for link-out billings where program discounts are ineligible factors in a 30% collection risk, on an "apples-to-apples comparison" of the two slides, the projected revenue loss is actually much larger. Feb. 2025 Tr. 1220:16–1221:7 (Schiller).

[49] Epic also emphasizes Apple witness testimony acknowledging that even though the Injunction applies to all developers, they made the deliberate decision to exclude participation in VPP and NPP from participation in the Link Entitlement. *See, e.g.*, May 2024 Tr. 488:23–489:22 (Oliver). While VPP and NPP developers lose program benefits if they choose to utilize external links, they are ultimately subject to the

Here too, Apple chose the most *anti*competitive course.

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Finally, under the Link Entitlement, Apple reserves the right in its sole discretion to revoke a link entitlement at any time. (May 2024 Tr. 31:14–16 (Fischer); CX-2.3 § 2.3.) This rule targets external links mandated by the Injunction—Apple permits developers to include links to external websites for non-transaction purposes without applying for an entitlement or obtaining permission from Apple. (May 2024 Tr. 31:23–32:2 (Fischer).) Apple does *not* require developers who sell physical goods or services to apply for any type of entitlement before their app links to a third-party payment solution. (*Id.* at 32:7–11.)

As of the May 2024 hearing, only 34 developers out of the approximately 136,000 total developers on the App Store applied for the program, and seventeen of those developers had not offered in-app purchases in the first place.[50] In May 2024, Apple argued that it would take more time for developers to take advantage of the Link Entitlement and that the adoption rates could not be known. (*E.g.*, May 2024

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same restrictions as any other developer selling digital products. To be sure, this loss of program benefits highlights Apple's clear design to forbid competitive alternatives to IAP, but this does not mean that Apple has carved out a class of developers from their compliance program. Viewed from any angle, Apple's first priority was to protect its bottom line.

[50] As of the May 2024 hearings, Mr. Oliver testified that he had no discussions with any large developers about using the Link Entitlement. (May 2024 Tr. 499:22–25 (Oliver).)

Tr. 278:3–5 (Roman), 761:12–762:8 (Schiller).) Apple attempted here to mislead.

Given the revelations of the February 2025 hearing, Apple modeled the lack of adoption. That Apple adduced no testimony or evidence indicating developer adoption of the program is no surprise. As shown above, Apple knew it was choosing a course which would fail to stimulate any meaningful competition to Apple's IAP and thereby maintain its revenue stream.

IV. DISCUSSION

Before the Court are several motions, three of which form the primary discussion. *First*, Apple moves to set aside this Court's judgment and injunction based on two intervening cases handed down after the judgment issued. *Second*, Epic moves to enforce the injunction and hold Apple in civil contempt for blatantly violating the injunction. *Third*, Apple moves for indemnification under the DPLA after the Ninth Circuit's reversal of this Court's prior findings. The Court considers each.

A. Apple's Motion to Set Aside Judgment

As a preliminary matter, Apple moves under Rule 60(b) to set aside this Court's judgment based on two decisions issued after the judgment and injunction: *Beverage v. Apple, Inc.*, 101 Cal.App.5th 736, 320 Cal. Rptr. 3d 427 (2024), *review denied* (July 10, 2024), and *Murthy v. Missouri*, 603 U.S. 43, 144 S.Ct. 1972, 219 L.Ed.2d 604 (2024).

Reconsideration under Federal Rule of Civil Procedure 60(b) "is an 'extraordinary remedy that works against the interest of finality and should be applied only in exceptional circumstances.'" *FTC v. Apex Cap. Grp.*, 2021 WL 7707269, at *2 (C.D. Cal.

Sept. 3, 2021) (citation omitted). "Motions for relief from judgment pursuant to Rule 60(b) are addressed to the sound discretion of the district court and will not be reversed absent an abuse of discretion." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004).

Rule 60(b)(5) permits a court, "[o]n motion and just terms," to "relieve a party or its legal representative from a final judgment" when "applying it prospectively is no longer equitable."[51] Relief is warranted "when the party seeking relief from an injunction or consent decree can show 'a significant change either in factual conditions or in law.'" *Agostini v. Felton*, 521 U.S. 203, 215, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992)). "[W]hen a district court reviews an injunction based solely on law that has since been altered to permit what was previously forbidden, it is an abuse of discretion to refuse to modify the injunction in the light of the changed law." *California by & through Becerra v. U.S. Env't Prot. Agency*, 978 F.3d 708, 718–19 (9th Cir. 2020).

According to Apple, *Beverage* and *Murthy* present significant changes in the law underlying Apple's judgment that warrant relief therefrom. In *Beverage*, Apple contends the California Court of Appeal now

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[51] Apple also references Rule 60(b)(6), which permits a court to relieve a party from a final judgment for "any other reason that justifies relief." Rule 60(b)(6) is "used sparingly as an equitable remedy to prevent manifest injustice" and is used "only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006) (citations omitted).

explicitly permits what this Court held was forbidden. As for *Murthy*, Apple argues the decision changed the law of standing as to require this Court, at a minimum, to limit the injunction's reach to only Epic and its affiliates.

1. *Beverage v. Apple, Inc.*

In *Beverage*, two plaintiffs who made purchases through the App Store in Fortnite for use on iOS devices sued Apple on behalf of themselves and a putative class, alleging that "Apple's restrictions on app distribution increased the prices developers charge iOS device users, and that Apple's anti-steering restrictions 'artificially increase' Apple's power within the market for mobile gaming transactions." *Beverage*, 320 Cal. Rptr. 3d at 433. Plaintiffs asserted three causes of action for violations of (1) the Cartwright Act, (2) the "unlawful" prong of the UCL, and (3) the "unfair" prong of the UCL. *Id.* at 433–34.

The trial court granted Apple's demurrer, finding that plaintiffs failed to state a claim under the Cartwright Act and the "unlawful" prong of the UCL as a matter of law because they alleged only unilateral conduct by Apple, which was immunized from antitrust liability under *Colgate*. *Id.* at 434. The claim for violations of the "unfair" prong of the UCL was then barred by *Chavez*. *Id.*

The Court of Appeal affirmed and elaborated on the legal framework. Under the Cartwright Act, "unlike its federal counterpart, the Sherman Act, 'single firm monopolization is not cognizable . . . .'" *Id.* at 436 (citation omitted) (quoting *Asahi Kasei Pharma Corp. v. CoTherix, Inc.*, 204 Cal.App.4th 1, 138 Cal. Rptr. 3d 620, 626 (2012)). Instead, a plaintiff

must allege the formation and operation of a conspiracy and illegal acts done in furtherance of the conspiracy. *Id.* at 437. "Conversely, a claim describing only a unilateral refusal to deal without alleging a corresponding illegal conspiracy or combination does not state an actionable antitrust claim." *Id.* The premise underlying this proposition—that "'a private party generally may choose to do or not do business with whomever it pleases' without violating antitrust laws"—is known as the *Colgate* doctrine. *Id.* (quoting *Drum v. San Fernando Valley Bar Assn.*, 182 Cal.App.4th 247, 106 Cal. Rptr. 3d 46, 51 (2010)); *see also United States v. Colgate & Co.*, 250 U.S. 300, 39 S.Ct. 465, 63 L.Ed. 992 (1919). Additionally, under *Cel-Tech*, "[w]hen specific legislation provides a 'safe harbor,' plaintiffs may not use the general unfair competition law to assault that harbor." *Id.* at 435 (quoting *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 83 Cal.Rptr.2d 548, 973 P.2d 527, 541 (Cal. 1999)).

"In *Chavez*, a case decided after *Cel-Tech*, the court applied the *Colgate* doctrine to preclude a UCL cause of action" because "the plaintiff failed to plead facts sufficient to establish a coerced agreement in violation of the Cartwright Act or the 'unlawful' prong of the UCL." *Id.* at 438 (discussing *Chavez v. Whirlpool Corp.*, 93 Cal.App.4th 363,113 Cal.Rptr.2d 175 (2001)).[52] By the same token, the *Chavez*

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[52] *See also Beverage*, 320 Cal.Rptr.3d at 438 ("[A] manufacturer's announcement of a resale price policy and its refusal to deal with the dealers who do not comply coupled with the dealers' voluntary acquiescence in the policy does not constitute an implied agreement or an unlawful combination as a matter of law." (quoting *Chavez*, 113 Cal.Rptr.2d at 182.))

plaintiffs failed to state a claim under the UCL's "unfair" prong, because "the determination that the conduct is not an unreasonable restraint of trade" under the Cartwright Act or the "unlawful" prong of the UCL "necessarily implies that the conduct is not 'unfair' toward consumers." *Id.* (quoting *Chavez*, 113 Cal.Rptr.2d at 184). "To permit a separate inquiry into essentially the same question under the unfair competition law would only invite conflict and uncertainty and could lead to the enjoining of procompetitive conduct." *Chavez*, 113 Cal.Rptr.2d at 184.

Before the Court of Appeal, the *Beverage* plaintiffs' "challenge [was] limited only to the dismissal of their cause of action under the 'unfair' prong of the UCL," because plaintiffs had "abandoned any claim of error in the other aspects of the trial court's ruling on Apple's demurrer." *Id.* at 439. Thus, the Court of Appeal presumed that plaintiffs' causes of action under the Cartwright Act and the "unlawful" prong of the UCL were legally insufficient under the *Colgate* doctrine. *Id.* As a consequence, plaintiffs presented the Court of Appeal with a narrow question, namely whether plaintiffs "adequately alleged an 'unfair' act or practice under the UCL considering the trial court's ruling that Apple's practices constituted permissible unilateral conduct." *Id.*; *see also id.* at 434 ("The central premise of Plaintiffs' argument is that *Chavez* was wrongly decided to the extent it held that a failed antitrust claim cannot be replead as an unfair business practice under the UCL.").

The Court of Appeal concluded "that the *Colgate* doctrine provides Apple with a 'safe harbor' against Plaintiffs' UCL claim under the 'unfair' prong." *Id.* at 441. Consistent with *Chavez*, "a plaintiff cannot plead

around the absolute bar imposed by the *Colgate* doctrine by resurrecting a failed antitrust claim as an unfair business practice under the UCL, especially when, as here, the only other cause of action alleged in the SAC was a violation of the Cartwright Act." *Id.* at 440.

Applied to this case, *Beverage* does not warrant setting aside this Court's judgment and Injunction. *First, Beverage* did not change California law. The plaintiffs argued that "*Chavez* was wrongly decided and is 'wholly inconsistent' with *Cel-Tech*." *Id.* at 439. The Court of Appeal disagreed: "*Chavez* is entirely consistent with *Cel-Tech*," and "[i]ts holding has been adopted and applied by other California Courts of Appeal." *Id.* at 440–41. In other words, the *Beverage* decision explicitly declined to change California law. Ironically, Apple agrees: despite Apple's motion before this Court, in Apple's answer to the *Beverage* plaintiffs' petition for review in the Supreme Court of California, Apple wrote that the "decision below followed a decision of the Second Appellate District that reached the same result more than 20 years ago, *Chavez v. Whirlpool Corp.* . . . California courts have followed *Chavez* for more than two decades, and no California appellate court has questioned or departed from its holding." Answer to Petition for Review ("Apple's Answer to Petition") at 7, *Beverage v. Apple Inc.*, No. S285154 (Cal. June 18, 2024).[53]

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[53] Apple continued, explaining that "[i]n the Court of Appeal, plaintiffs conceded that the *Chavez* decision would bar their 'unfair' claim under the UCL. Plaintiffs urged the Court of Appeal to disagree with *Chavez* and adopt a different rule. In declining to do so, that court relied on settled principles and emphasized the 'narrow' nature of its holding, stressing that its 'decision is limited to' situations 'where the same conduct found

Second, this Court's judgment does not conflict with *Beverage*. The *Beverage* court stressed that its "decision is a narrow one" which "is limited to situations typified by this case, where the same conduct found immune from antitrust liability by the *Colgate* doctrine is also alleged to violate the 'unfair' prong of the UCL." *Beverage*, 320 Cal. Rptr. 3d at 442. That is not this case. Neither this Court nor the Ninth Circuit have held that Apple's conduct at-issue in this case is immune from antitrust liability under the *Colgate* doctrine, nor did either court disagree with the law articulated in *Colgate* or *Chavez*.[54]

Once again, Apple's answer to the *Beverage* plaintiffs' petition for review in the Supreme Court of California is instructive. In its briefing, Apple argued that the *Beverage* plaintiffs "are wrong" to "argue that *Chavez* and the decision below are inconsistent with decisions in a federal court lawsuit involving Epic Games," i.e., this case. Apple's Answer to Petition at 11–12. "The Ninth Circuit did not disagree with *Chavez*, nor did it address the applicability of the *Colgate* doctrine to the conduct challenged in that case, and therefore did not resolve the issue presented

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immune from antitrust liability by the *Colgate* doctrine is also alleged to violate the "unfair" prong of the UCL.'" Apple's Answer to Petition at 7.

[54] The Ninth Circuit in fact acknowledged that in *Chavez*, "the *Colgate* doctrine—that it is lawful for a company to unilaterally announce the terms on which it will deal—precluded a UCL action." *Epic Games, Inc.*, 67 F.4th at 1001. However, the Ninth Circuit explained that "[n]either Apple nor any of its *amici* cite a single case in which a court has held that, when a federal antitrust claim suffers from a *proof deficiency*, rather than a *categorical legal bar*, the conduct underlying the antitrust claim cannot be deemed unfair pursuant to the UCL." *Id.*

in this case." *Id.* at 12. The *Beverage* court itself acknowledged as much. *See Beverage*, 320 Cal. Rptr. 3d at 442 n.6 ("The Ninth Circuit and the district court mentioned *Chavez* only in passing, and neither court engaged a rigorous analysis of the *Colgate* doctrine and its effect on UCL claims. We therefore do not find these decisions persuasive on the precise issue presented by this appeal.").

Apple had the opportunity to argue that *Colgate* immunized its antitrust liability before this Court in the first instance, before the Ninth Circuit, and on petition for certiorari at the Supreme Court. Direct appeal was the appropriate route for a challenge under *Colgate*, and Apple lost on appeal. Apple cannot revisit its prior losses under Rule 60(b) absent a significant change in factual conditions or the law, and *Beverage*'s affirmance of settled California law does not change to the legal theories previously available to Apple at trial and on appeal.[55]

Third, Beverage does not "permit what was previously forbidden." *See California v. EPA*, 978 F.3d at 719. The *Beverage* trial court dismissed the plaintiffs' claims at the motion to dismiss stage, and the Court of Appeal *assumed without deciding* that Apple's conduct *as pled* was permissible under the

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[55] The parties also use Apple's Rule 60(b) motion to dive into the merits of *Colgate*'s applicability. For example, Epic appears to suggest that *Colgate* may not apply because the Ninth Circuit's decision—issued after the *Beverage* trial court's decision—concluded that Apple's agreements with developers constituted bilateral contracts rather than unilateral conduct for the purposes of Epic's Sherman Act Section 1 claims. (*See* Dkt. No. 1049, Epic's Opp. at 16 n.4.) Regardless, for the reasons stated above, this Court declines the invitation to revisit those merits where *Beverage* made no change to settled California law.

Cartwright Act, because plaintiffs conceded that issue for purposes of appeal. *Beverage*, 320 Cal. Rptr. 3d at 439. The Court of Appeal did not decide whether Apple's anti-steering provisions violated antitrust law and was faced instead with the narrow question of whether plaintiffs' concession as to their Cartwright Act claims rendered their UCL unfairness claim non-cognizable as a matter of pleading.[56]

Beverage does not warrant setting aside this Court's judgment and injunction under Rule 60(b).

2. *Murthy v. Missouri*

In *Murthy*, the "plaintiffs, two States and five social-media users, sued dozens of Executive Branch officials and agencies, alleging that they pressured the platforms to suppress protected speech in violation of the First Amendment." *Murthy*, 603 U.S. at 49, 144 S.Ct. 1972. The Fifth Circuit agreed and "affirmed a sweeping preliminary injunction." *Id.* The Supreme Court reversed, holding that the plaintiffs failed to establish standing by "demonstrat[ing] a substantial risk that, in the near future, they will suffer an injury that is traceable to a Government defendant and redressable by the injunction they seek." *Id.* at 49–50, 76, 144 S.Ct. 1972.

The Supreme Court reiterated the familiar rule that, to establish standing, at least one plaintiff "must show that she has suffered, or will suffer, an injury that is 'concrete, particularized, and actual or imminent; fairly traceable to the challenged action;

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[56] By contrast, both this Court and the Ninth Circuit developed and evaluated a trial record that involved both state and federal antitrust claims not implicated in *Beverage*.

and redressable by a favorable ruling.'" *Id.* at 57, 144 S.Ct. 1972 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013)). The *Murthy* plaintiffs claimed "standing based on the 'direct censorship' of their own speech as well as the 'right to listen' to others who faced social media censorship." *Id.* However, both theories depended on the conduct of *third-party* social media platforms, rather than the conduct of the *defendant* Government agencies and officials alone. *Id.* This "one-step-removed, anticipatory nature of their alleged injuries" presented two particular challenges. *Id.*

First, "it is a bedrock principle that a federal court cannot redress 'injury that results from the independent action of some third party not before the court,'" *id.* (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)), and as a consequence courts are "reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment," *id.* (quoting *Clapper*, 568 U.S. at 413, 133 S.Ct. 1138). For those theories, plaintiffs must show that the third party "will likely react in predictable ways" to the defendants' conduct. *Id.* at 57–58, 96 S.Ct. 1917 (citation omitted). Second, the Supreme Court explained that "because the plaintiffs request forward-looking relief, they must face 'a real and immediate threat of repeated injury.'" *Id.* at 58, 96 S.Ct. 1917 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 496, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974)).

"Putting these requirements together, the plaintiffs must show a substantial risk that, in the near future, at least one platform will restrict the speech of at least one plaintiff in response to the

actions of at least one Government defendant." *Id.* "On this record, that is a tall order." *Id.* "The primary weakness in the record of past restrictions is the lack of specific causation findings with respect to any discrete instance of content moderation." *Id.* at 59, 96 S.Ct. 1917. Neither the district court nor the Fifth Circuit made any specific causation findings. *Id.* Operating at such a high level of generality, the Supreme Court explained, was insufficient to establish standing in a "sprawling suit like" *Murthy* where "plaintiffs faced speech restrictions on different platforms, about different topics, at different times," "[d]ifferent groups of defendants communicated with different platforms, about different topics, at different times," and each platform had "independent incentives to moderate content." *Id.* at 61, 96 S.Ct. 1917. Nor did plaintiffs' allegations support "obtain[ing] forward-looking relief": "without proof of an ongoing pressure campaign, it is entirely speculative that the platforms' future moderation decisions will be attributable, even in part, to the defendants." *Id.* at 69, 96 S.Ct. 1917.

Applied to this case, *Murthy* does not warrant setting aside this Court's judgment and Injunction against Apple. *First, Murthy* did not change the law of standing, but rather applied familiar rules of standing to a novel circumstance. Apple argues that the "Court in *Murthy* explained that it is a 'tall order' to establish standing for an injunction when the plaintiff's theory of future injury depends on anticipated conduct of 'independent decisionmakers.'" (Dkt. No. 1018 at 12.) That mischaracterizes *Murthy*: as to establishing plaintiffs' standing, the Court wrote that "[*o*]*n this record*, that is a tall order." *Murthy*, 603 U.S. at 58, 144 S.Ct. 1972 (emphasis supplied).

Rather, the Court stressed that it was *not* applying a new and elevated standard. *See id.* at 74 n.11, 144 S.Ct. 1972.

Second, Apple muddles the law and advances an argument that has little to do with *Murthy*. As Epic points out, Apple conflates two issues: whether Epic has standing to obtain an injunction, and the appropriate scope of that injunction. As to Epic's standing, while *Murthy* articulates the applicable legal framework at a high level, *Murthy* neither changes that framework nor addresses the foundation of Epic's standing to challenge Apple's anti-steering provisions, i.e., injury to Epic as a competing game distributor and injury to Epic's subsidiaries' earnings. *See Epic Games, Inc.*, 67 F.4th at 1000.

As to the appropriate *scope* of an injunction once a party has established standing, *Murthy* provides no instruction because *Murthy* did not reach that distinct question. The Ninth Circuit's opinion in this case is indicative: that opinion discussed Epic's standing in one section under one set of legal standards, and the availability and scope of the injunction in another section under a different set of legal standards. *See Epic Games, Inc.*, 67 F.4th at 999–1000, 1002–03. The same is true for Judge Smith's concurrence in the order granting the motion to stay the mandate pending filing a petition for certiorari. *See Epic Games, Inc. v. Apple, Inc.*, 73 F.4th 785 (9th Cir. 2023) (Smith, J., concurring).

Apple's citation to *Murthy* is the latest installment in its repeated attempts to cabin the scope of the injunction. Fundamentally, Apple argues that "[u]nder *Murthy*, Epic lacks standing to enjoin Apple's application of its anti-steering rules toward third-

party developers." (Dkt. No. 1018 at 13.)[57] To be clear, neither this Court nor the Ninth Circuit have held, as Apple continues to try and mischaracterize, that Epic has obtained injunctive relief *on behalf of* third parties.[58] Rather, Epic has standing to seek injunctive relief with respect to *its own injuries.* That relief, as this Court, the Ninth Circuit, and Judge Smith's concurrence on the order to stay made clear, "enjoin[ed] Apple's anti-steering provision as to all iOS developers because doing so was necessary to fully remedy the harm *that Epic suffers* in its role as a competing games distributor." *Epic Games, Inc.*, 73 F.4th at 787 (Smith, J., concurring) (emphasis supplied). Apple's arguments to the contrary and mischaracterization of those findings have been repeatedly rejected.[59]

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[57] *See also* Dkt. No. 1018, Apple's Mot. to Set Aside at 13 ("Epic had the burden of proving that (1) third-party developers would imminently react to a change in Apple's policies by steering iOS users to the Epic Games Store as a place for purchasing in-app digital goods or services; (2) such steering by third-party developers would imminently cause their customers to make purchases on the Epic Games Store through external links; and (3) enjoining Apple's restrictions on such steering would imminently cause an indirect increase in Epic's profits.").

[58] *See, e.g.*, Dkt. No. 1018, Apple's Mtn. to Set Aside at 14 ("To be sure, Judge Smith's concurrence in the order staying the mandate stated that record is 'filled with support' for Epic's standing to enjoin Apple's conduct towards third-party developers.").

[59] Apple advanced the same argument in substance when seeking a stay of the injunction pending filing of a writ of certiorari. *See Epic Games, Inc.*, 73 F.4th at 788 (Smith, J., concurring) ("Apple contends that the district court's injunction impermissibly allowed Epic's suit to proceed as a 'de facto' class action in which Epic obtained nationwide injunctive 'relief on

In short, *Murthy* has little to do with this case, does not change the relevant law, and as such does not warrant setting aside this Court's judgment and injunction.[60]

* * *

Because neither *Beverage* nor *Murthy* have altered the law, the factual circumstances of this case, or now "permit what was previously forbidden," *California v. EPA*, 978 F.3d at 719, Apple has failed to show that applying the judgment "prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). Thus, Apple's motion for relief from the judgment is **DENIED**.

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behalf of others.' . . . Like its standing argument, this argument overlooks aspects of the panel opinion's analysis that are inconvenient to its position and is incorrect. As the opinion explained, it was Epic's role as a competing games distributor—not its role as a parent company—that justified application of the injunction beyond just Epic's subsidiaries.").

[60] Apple's other contentions with respect to *Murthy* lack merit. For instance, Apple's argument focuses on *Murthy*'s language that courts are "reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment." *Murthy*, 603 U.S. at 57, 144 S.Ct. 1972 (quoting *Clapper*, 568 U.S. at 413, 133 S.Ct. 1138). However, Epic's injury does not depend on third-party decisionmakers, but Apple's anti-steering provisions. Apple also argues that the *Murthy* court engaged in a detailed, plaintiff-by-plaintiff analysis of injury, and the Ninth Circuit's "two short sentences" of analysis are insufficiently specific under *Murthy*. Dkt. No. 1018 at 12–13. For one, *Murthy* did not alter the standard of review applicable in this case. Regardless, as Judge Smith wrote in his concurrence on the order to stay, the record is "filled with support for the common-sense proposition that Epic is harmed as a competing games distributor." *Epic Games, Inc.*, 73 F.4th at 786. That the panel's *analysis* is concise does not reduce the support in the record.

B. Epic's Motion to Enforce Injunction

On March 13, 2024, Epic moved to enforce the Injunction after Apple released its compliance program with the Link Entitlement. (Dkt. No. 897.) Epic requests that this Court "enter an order (1) holding Apple in contempt for violating the Court's Injunction; (2) requiring Apple to promptly bring its policies into compliance with the Injunction; and (3) requiring Apple to remove all anti-steering provisions" in its developer guidelines." (*Id.*)

The Court may hold Apple in civil contempt if Apple violated "a specific and definite court order by failure to take all reasonable steps within the part's power to comply." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). "[T]he party alleging civil contempt must demonstrate by clear and convincing evidence that (1) the contemnor violated a court order, (2) the non-compliance was more than technical or de minimis, and (3) the contemnor's conduct was not the product of a good faith or reasonable interpretation of the violated order." *Facebook, Inc. v. Power Ventures, Inc.*, 2017 WL 3394754, at *8 (N.D. Cal. Aug. 8, 2017). Sanctions for civil contempt are warranted where a court "weighs all the evidence properly before it" and determines that there is a "present ability to obey" and past "failure to do so [that] constitutes deliberate defiance or willful disobedience which a coercive sanction will break." *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 781 n.6 (9th Cir. 1983). In awarding civil contempt sanctions, the Court must "consider the character and magnitude of the harm threatened by continued contumacy, and the probably effectiveness of any suggested sanction." *Gen. Signal*

Corp. v. Donallco, Inc., 787 F.2d 1376, 1380 (9th Cir. 1986).[61]

"Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974).[62] "In deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded." *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 949 (9th Cir. 2014) (quoting *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942)). "[A]ll ambiguities are resolved in favor of the person subject to the injunction." *Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995) (citation omitted).

The Court's analysis is divided in two parts. *First*, the Court considers Apple's defense that it need not

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61 "Substantial compliance with the court order is a defense to civil contempt," and "a person should not be held in contempt if his action appears to be based on a good faith and reasonable interpretation of the court's order." *Id.* (cleaned up); *but see In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) ("The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." (quoting *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987))).

62 *See also Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995) (The "injunction must be clear enough on its face to give . . . notice that the behavior is forbidden."); *cf. Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1134 (9th Cir. 2006) ("The recipient of a TRO, which usually takes effect immediately, should not be left guessing as to what conduct is enjoined.").

look outside the text of the Injunction and considered this Court's and the Ninth Circuit's orders that explained the legal basis for the injunction. *Second*, for efficiency purposes, the Court has indicated in the factual section above each time it found that Apple had chosen to respond to the Injunction with the most anticompetitive options it considered. That, taken together, evidences clear and convincing evidence of Apple's violation of the Injunction. Nonetheless, the Court expounds further on how Apple's response violates this Court's orders.

1. The Letter and Spirit of the Injunction

As a preliminary matter, Apple disputes whether this Court can look outside the four corners of the injunction to hold it in civil contempt. In *Sea Shepard*, the Ninth Circuit provided that "it is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded." 774 F.3d at 949. Despite this unequivocal language, Apple argues that the Court cannot look to the spirit or other objects of the Injunction and judgment issued against it relying on one district court case that appears to have tried to limit *Sea Shepherd* to its facts. *See Epona, LLC v. Cnty. of Ventura*, 2019 WL 4187393, at *14 (C.D. Cal. Apr. 12, 2019) ("*Sea Shepherd* did not conclude that a party may be held in contempt for refusing to engage in affirmative conduct that is not required by the terms of a prohibitory injunction, or for engaging in conduct that is not specifically and definitely prohibited therein.").

The Court disagrees. There are several issues with Apple's argument. *First*, it is ludicrous to expect

any court to repeat the contents of a 180-page order issued in conjunction with a simultaneously issued one-paragraph injunction. The latter flows from the former. To suggest otherwise strains credulity. *Second*, even limited to the four corners of the Injunction, Apple violated the literal text. *Third*, contrary to Apple's position, other courts within this and other circuits will look to the spirit of the injunction when a litigant applies a dubiously literal interpretation of the injunction, particularly where that interpretation is designed to evade the injunction's goals. *See, e.g., Simon v. City & Cnty. of San Francisco*, No. 22-CV-05541-JST, 2024 WL 4314207, at *3 (N.D. Cal. Sept. 26, 2024) ("Arguably, this conduct does not violate the strict terms of the injunction . . . . [However,] there can be no question that the conduct violates the spirit of the injunction."); *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942) ("In deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded."); *United States v. Christie Indus., Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972) (While ambiguities are resolved in favor of the person charged with contempt, "this is not to say that where an injunction does give fair warning of the acts that it forbids, it can be avoided on merely technical grounds. The language of an injunction must be read in the light of the circumstances surrounding its entry: the relief sought by the moving party, the evidence produced at the hearing on the injunction, and the mischief that the injunction seeks to prevent."); *see also Cnty. of Fulton v. Sec'y of Commonwealth*, 292

A.3d 974, 1007 (Pa.), *cert. denied* —— U.S. ——, 144 S. Ct. 283, 217 L.Ed.2d 129 (2023) ("To similar effect is a long list of cases, including a Second Circuit case in which the court rejected a defense based upon a dubiously literal interpretation of an order . . . .").

Fourth, Apple's approach would require courts to effectively engage in a "whack-a-mole" game to require compliance. Consider Justice Douglas's reasoning in *McComb v. Jacksonville Paper Company*:

> It does not lie in their mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law which we condemned [previously]. The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided today by showing that the specific plan adopted by respondents was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught.

336 U.S. 187, 192–93, 69 S.Ct. 497, 93 L.Ed. 599 (1949). This case presents the same reality today and risk for tomorrow. The Court prohibited certain of Apple's policies that prevented meaningful competition with IAP. Apple rewrote those policies by choosing a different anticompetitive path (that was

more expensive for developers) with full knowledge of what it was doing. Apple had its opportunity to conduct a bottoms-up analysis of the value of its services. It declined to do so. Instead, it opted to construct a program that nullified the revenue impact of the Injunction by prohibiting any viable alternative.

Fifth, Apple's arguments that the Court did not enjoin Apple's commission ignore explicit findings in the Injunction. Most importantly, this Court, and the Ninth Circuit, found Apple's 30% commission on IAP transactions was supracompetitive and unjustified. The Court and the Ninth Circuit further found that Apple's then-existing program to stifle competition violated the UCL, especially as seen in the anti-steering provisions. Thus, all acts are based upon those identified above as the "Primary and Overarching Findings" resulting in this contempt order.

Crucially, no commissions had ever existed on external link-out purchases. That is undisputed. Apple's *new* attempt to change this "zero commission" rubric are evaluated under the terms of the Injunction. While true that the Court did not select a rate, the Court is authorized to evaluate Apple's response to the Injunction as based on its Primary and Overarching Findings. *See Epic Games, Inc.*, 559 F. Supp. 3d at 1069 (explaining that eliminating Apple's anti-steering provisions "does not require the Court to micromanage business operations which courts are not well-suited to do as the Supreme Court has appropriately recognized").

As set forth in detail above, the Court finds that the evidence clearly and convincingly demonstrates that Apple *willfully* chose to ignore the Injunction,

willfully chose to create and impose another supracompetitive rate and new restrictions, and thus *willfully* violated the injunction.[63] In fact, despite numerous opportunities, not once did Apple choose a path that would have shown compliance.

In short, Apple's conduct lacks any justification: it does not comport with the text of the Injunction, requires a strained and questionable interpretation of that language, completely ignores this Court's 180-page Injunction and the Ninth Circuit's 91-page opinion, and prompted lies on the witness stand. The law requires that Apple be on notice of the scope of permissible conduct to hold Apple in civil contempt. Apple was. In fact, at every step Apple considered whether its actions would comply, and at every step Apple chose to maintain its anticompetitive revenue stream over compliance. Given the repeated misrepresentations, the real-time business documents, and the proffer of a made-for-litigation expert "report," the Court reasonably concludes that Apple knew it was violating the Injunction.

2. More Specific Findings of Civil Contempt

Several aspects of the Link Entitlement program, taken together and to a certain extent independently, violate the Injunction. The Court considers them in

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[63] Apple also points to Rule 65(d), which provides that "[e]very order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d). For the reasons stated above and in the Court's 180-page Injunction, Apple received a more than fulsome notice of what specific conduct was prohibited at law.

two groups: (i) the commission rate, and (ii) design restrictions and purchase-flow friction.

The Commission Rate. As described above, Apple assessed the external costs developers face when utilizing linked-out transactions, which generally ranged based on the size of the developer—the larger the developer, the better able to reduce the external costs of linked-out transactions. With that information, Apple selected a 3% discount on its 30% IAP commission that it knew was anticompetitive. In doing so, Apple willfully set a commission rate that in practice made all alternatives to IAP economically non-viable.[64] The Court cannot conceive of how any reasonable mind interpreting this Court's and the Ninth Circuit's orders would find that structure permissible, because it ***forecloses competitive alternatives***. That appears to have been the point. Business documents reveal that the internal justification was to maintain the existing anticompetitive revenue stream.

This Court previously recognized that "[e]ven in the absence of IAP, Apple could still charge a commission on developers." *Epic Games, Inc.*, 559 F.Supp.3d at 1042.[65] Apple was tasked with valuing

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[64] The *amici* agree. (*See, e.g.*, Dkt. No. 904-1 at 14 ("[D]evelopers incur additional costs for transactions outside of their apps that would exceed the 3% 'discount' to Apple's normal IAP commission in almost every case. For example, payment processing fees alone often exceed 3% of the amount of the transaction.").)

[65] Apple emphasizes that California courts have declined to use the UCL as a ratemaking tool. (Dkt. No. 1324 at 30); *see, e.g., Lazzareschi Inv. Co. v. San Francisco Fed. Sav. & Loan Assn.*, 22 Cal.App.3d 303, 99 Cal.Rptr. 417, 422 (1971) ("[T]he control of charges, if it be desirable, is better accomplished by

its intellectual property, not with reverse engineering a number right under 30% that would allow it to maintain its anticompetitive revenue stream. *Id.* at 994 ("Apple cannot hide behind its lack of clarity on the value of its intellectual property."). Apple and Mr. Schiller knew this. (*See* Feb. 2025 Tr. 1893:11–1894:22 (Schiller).) Apple ignored this opportunity choosing instead to retroactively justify the desired end result.

The AG report's recommendation of a commission rate on link-out transactions as the basis for its commission determination is entirely manufactured, and Apple's reliance thereon is a sham. (*See, e.g.*, Dkt. No. 1324, Apple's Post-Hearing Br. at 12.) As the

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statute or by regulation authorized by statute than by ad hoc decisions of the courts."). Apple also argues that the question of whether Apple's commission appropriately reflects the value of its intellectual property is not an issue for injunction compliance, and that it is legitimate for a business to promote the value of its corporation for stockholders. (Dkt. No. 1324 at 18, 32.) Apple misses the point. The issue is that Apple flouted the Court's order by designing a top-down anticompetitive system, in which its commission played a fundamental role.

For the same reasons, the Court disagrees that requiring Apple to set a commission of zero constitutes and unconstitutional taking. *See* Dkt. No. 1324 at 30 (citing *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 141 S.Ct. 2063, 210 L.Ed.2d 369 (2021)). For instance, as described *infra* Section IV, in the trademark context, "a party who has once infringed is allowed less leniency for purposes of injunction enforcement than an innocent party." *Forever 21, Inc. v. Ultimate Offprice, Inc.*, 2013 WL 4718366, at *3 (C.D. Cal. Sept. 3, 2013). Apple does not have an absolute right to the intellectual property that it wields as a shield to competition without adequate justification of its value. Apple was provided with an opportunity to value that intellectual property and chose not to do so.

2025 hearing revealed, the AG's report did not materially factor into Apple's decision-making process. It was created as a show piece for the Court. The plan backfired.

The real-time business documents which the Court ordered Apple to produce revealed the true business decision. Apple's focus was on the impacts to its revenue as well as some analysis of the costs developers would face when implementing a link-out transaction. The AG report only appears in a public-facing presentation for the July 5, 2023 meeting where Apple decided to impose a 27% commission. Thus, the Court does not credit the AG report as support for a bottoms-up analysis of the value of Apple's intellectual property.

Design Restrictions and Purchase-Flow Friction. In addition to a commission rate, Apple imposed a variety of restrictions on developers' ability to craft a link-out program: requiring any external purchase link be placed outside of the IAP purchase-flow to which a user is ordinarily directed; prohibiting developers from designing "buttons" aside from Apple's "plain 'link' button" style; prohibiting developers from using any calls to action aside from a limited set defined by Apple; instituting a full-window takeover (scare screen) after clicking on an external link *only* in the context of purchases of digital goods; and prohibiting the use of dynamic URLs.

This Court previously explained that the "measured remedy" of eliminating Apple's anti-steering provisions "will increase competition, increase transparency, increase consumer choice and information while preserving Apple's iOS ecosystem which has procompetitive justifications." *See Epic Games, Inc.*, 559 F.Supp.3d at 1069. Despite that

directive, Apple decided to replace the explicit anti-steering provisions the Injunction prohibited with a mosaic of the same: an ensemble of requirements that significantly reduces developers' ability to steer consumers to any competitive, favorable alternatives. Nor was this accidental: Apple's sensitivity analyses of breakage reveal that Apple was modeling precisely the amount of friction needed in a transaction to ensure that link-out transactions were not viable for a developer. While Apple initially considered imposing some of these restrictions *as an alternative* to a commission, it decided to impose *all* restrictions *and* set a commission rate. In other words, Apple sought to secure its illegal revenue stream from every angle.

Apple's justifications for these requirements (set forth above) strain credulity. Most notably, and to underscore Apple's meritless justifications, Apple does not require developers selling physical goods to apply for a link entitlement before deploying link-out transactions. Apple imposes these restrictions *only* for link-outs that compete with IAP.

Further, two of Apple's restrictions are explicitly at odds with the Injunction. The Injunction prevented Apple from stopping developers from "including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to" IAP. Apple resorts to dictionaries (*see* Dkt. No. 1324 at 15–16) to argue that it no longer categorically prohibits developers from using buttons or other calls to action.[66] While perhaps literally true, the

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[66] Apple also points to authority that interprets the distinction between "regulating" and "prohibiting," particularly

gamesmanship abounds as the business documents reveal the true motive (and do not rely on dictionaries).

For button styles, Apple limits developers to what Apple calls the "plain" button style—essentially just a hyperlink—because Apple does not want the developers to use the more effective "button." A more effective button would increase competition. (*See* Feb. 2025 Tr. 1212:9–1213:22 (Schiller).) Similarly, Apple limits calls to action to five, narrowly cabined templates. (*See* CX-3.5.) Nowhere does the Court authorize those limitations. At a minimum, the Court need not decide whether these restrictions alone violate the Injunction, because Apple has violated the central mandate of this Court's orders: that Apple not foreclose competitive alternatives to IAP.[67]

To summarize, this Court's orders required that Apple not impose restrictions in its iOS marketplace

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in the context of statutory interpretation. Dkt. No. 1324 at 17; *see, e.g., Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 697, 142 S.Ct. 1929, 213 L.Ed.2d 221 (2022) (explaining that "to *regulate* something is usually understood to mean to fix the time, amount, degree, or rate of an activity according to rules" whereas "to *prohibit* something means to forbid, prevent, or effectively stop it, or make it impossible" (cleaned up)). In this way, Apple argues that its rules *regulate* and do not *prohibit* the use of calls to action or buttons. Other options may have constituted regulation. Here, the business documents prove the opposite: the overall effect is quite literally, intentional *de facto* prohibition.

[67] Additionally, Apple has excluded simultaneous participation in the VPP or NPP programs and the Link Entitlement program. While this mutual exclusion does not itself constitute a violation of the Injunction, it does highlight Apple's all-or-nothing approach—every developer would be subject to the same link-out program which, as discussed exhaustively, is not economically viable.

which would prohibit consumer access to and awareness of competitive alternatives to IAP. The Injunction specifically enjoined Apple's anti-steering provisions which at the time prohibited developers from raising that consumer awareness and access. In response, Apple intentionally devised a compliance scheme to prevent developers from deploying competitive alternatives to IAP. Apple's discounted commission rate, on its own, forecloses a developer's use of link-out purchases. Adding to that, Apple's various design restrictions and purchase-flow friction arbitrarily decrease the attractiveness of competitive alternatives (if they were utilized) and increase breakage in a purchase flow.

Apple's conduct violates the Injunction. The non-compliance was far from "technical or de minimis." Apple's lack of adequate justification, knowledge of the economic non-viability of its compliance program, motive to protect its illegal revenue stream and institute a new de facto anticompetitive structure, and then create a reverse-engineered justification to proffer to the Court cannot, in any universe, real or virtual, be viewed as product of good faith or a reasonable interpretation of the Court's orders.

The Court **HOLDS** Apple in civil contempt. Sanctions and relief with respect to Apple's noncompliance are set forth *infra* Section IV.

C. Privilege Disputes[68]

1. Apple's Motion to Strike

Apple moves to strike Philip Schiller's February 2025 testimony concerning a document that Apple

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[68] The Court will decide in a separate order Apple and Epic's rolling motions for relief for relief from non-dispositive

improperly under-redacted for privilege. (Dkt. No. 1328.) The Court rejects Apple's invitation to reconsider its prior ruling from the bench. Apple waited to raise its privilege objection until *after* Mr. Schiller testified about the document at length. At the hearing the following day, Apple's attorneys conceded their oversight in failing to object to the exhibit and Epic's questioning. (Feb. 2025 Tr. at 1443:23–24) ("I do understand the cat-is-out-of-the-bag problem from yesterday . . . .") The Court agreed and ruled that "[y]esterday's testimony stands." (Feb. 2025 Tr. at 1447:8.) That Apple is having second thoughts about its decision does not make for a proper motion for reconsideration. The testimony stands. Apple's Motion for Reconsideration is **DENIED**.

2. Apple's Rule 502(d) Motion

Prior to the February 2025 testimony, Apple moved for an order pursuant to Federal Rule of Evidence 502(d) that would "confirm[ ] that Apple's production of certain documents to [Epic] over which Apple continues to maintain claims of attorney-client privilege or work product protection," and any use of those documents at the hearing or in connection with Epic's motion to enforce, "does not waive any applicable protections in this proceeding or any other." (Dkt. No. 1198 at 2.) At the hearing, the Court rejected Apple's motion for an order pursuant to Rule 502(d). (Feb. 2025 Tr. at 1125:23–1126:12.) In short, a Rule 502(d) order is inappropriate where the Court has held that the at-issue documents are not

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orders issued by Judge Hixson involving his and the special masters' determinations of privilege in Apple's document productions. (Dkt. Nos. 1193, 1221, 1285, 1298, and 1305).

privileged. The Court elaborates as to two further considerations presented in the papers:

First, as to documents Apple has produced to Epic, Apple has been "compelled" by this Court to produce those documents over its objection, so in general Apple has not waived privilege with respect to documents by virtue of their production alone. *See Transamerica Computer Co. v. Int'l Bus. Machines Corp.*, 573 F.2d 646, 651 (9th Cir. 1978). That said, the Court does not and need not decide in general whether Apple's production constitutes waiver absent a review of specific documents and the particular context of their production.

Second, as to the use of any documents in the evidentiary hearing for which Apple maintains a claim of privilege, the Court cannot issue a carte blanche ruling that any use of privileged documents will not constitute waiver. Waiver will depend on what documents are used by which party and how they are used. On the one hand, should Epic make an *offensive* use of a privileged communication, Apple's *defensive* use of the portions of that *same* communication for which this Court has rejected Apple's claim of privilege will likely not constitute waiver, just as in Apple's cited case, *Shenzhenshi Haitiecheng Science and Technology Co., Ltd. v. Rearden LLC*, 2017 WL 8948739, at *5 (N.D. Cal. Nov. 15, 2017). On the other hand, Apple's *offensive* introduction of a privileged communication will likely constitute waiver, under the well-established doctrine that attorney-client privilege may not be used both as a sword and shield.

All this is to say, the Court declined to permit Apple to pre-litigate whether it will waive privilege over unspecified documents that it might use for

different purposes at this evidentiary hearing. Apple's motion for an order pursuant to Rule 502(d) is **DENIED**.

3. Abuse of Privilege

The Court discussed Apple's abuse of its privilege assertions *supra* Section I.D, which caused months of delay in this proceeding. Notably, as discussed earlier, on re-review Apple withdrew a significant body of its privilege claims, effectively withdrawing approximately 42.1% of those claims. These dilatory tactics were unwarranted, wasted party and judicial resources, and delayed the Court's ability to effectuate relief.

The Court's discussion in its December 31, 2024 order on Apple's first motion for relief provided the foundation for how Apple integrated the presence of legal personnel into documentation of business decisionmaking that, by this Court's and Judge Hixson's determinations, did not involve the provision of legal advice. (*See* Dkt. No. 1095.)

Adding a lawyer's name to a document does not create a privilege. Instructions from Apple's internal counsel Jennifer Brown are illustrative. In a set of email exchanges discussing drafts of a Project Wisconsin presentation, Ms. Brown wrote, "[a]lso, one procedural tweak - can we change the 'Prepared at the Request of Counsel' label in the slides to 'Prepared at the Request of External Counsel'. This work is necessary for our outside counsel to advocate our compliance." (CX-538.4.) Every email on this email thread self-designates as privileged, as does every slide in the presentation, even though the vast majority of information therein this Court and Judge Hixson have held do not contain privileged

information, but rather documents the business assessment Apple was conducting that is central to enforcement of the Injunction. While Ms. Brown explained that Apple was "working very closely with" external counsel "throughout the entire process" (Feb. 2025 Tr. 1615:4–5), that does not automatically confer privilege protections on all documents relevant to that process.

The record is rife with such examples of over-designation of privilege. As another example, consider an email discussed above from Apple's counsel Sean Cameron sent to Tim Cook, among others, on Friday, June 23, 2023. The email reads, in full:

> Privileged and Confidential
>
> Tim,
>
> At our meeting on Tuesday, you asked the team to revise the customer warning screen (which is surfaced when a customer taps on a link to the developer 's web site) to reference the fact that Apple's privacy and security standards do not apply to purchases made on the web.
>
> The team worked on updated copy — please see the original and updated versions below. We reviewed with Phil, Matt, and Jeff and believe that the revised language in bold clearly highlights the issue for customers.
>
> Please let us know if you have any comments, or if we are clear to move ahead with this change.
>
> Thank you.

(CX-225.1.)

Here, legal counsel provides "updated copy" after discussion with non-legal members of the team. The

only substantive comment as to the changed copy refers to how the revised language "clearly highlights the issue for customers." Nothing about this email indicates the presence or provision of legal advice, but rather implementing Mr. Cook's request. Like many of Apple's documents produced in connection with Epic's motion to enforce, this document does indicate, however, a desire to conceal Apple's real decisionmaking process, particularly where those decisions involved senior Apple executives. Given those abuses and others, the Court concluded that "sanctions are warranted" in its February 4, 2025 Order. (Dkt. No. 1171.)

Apple filed a "response," but that response ultimately harms its position. (Dkt. No. 1329-3 (sealed); Dkt. No. 1330 (redacted).) In its defense, Apple blames everyone but itself, claiming that it acted in good faith and under a compressed timeframe in conducting its privilege review. The first to be faulted are Apple's third-party document review vendors, Deloitte and Consilio. Apple claims that it appropriately instructed those teams on designating for privilege and argues that those instructions reflected Ninth Circuit precedent. Although Apple's outside counsel purportedly gave "weekly and often daily feedback to the vendor and outside counsel quality control teams," (Dkt. No. 1330 at 11), Apple did not catch, *and should have caught*, those errors. The notion that Apple mistakenly over-designated documents is not credible. Almost all "mistakes" and "inconsistencies" flow in one direction: toward withholding and redacting. Further, Apple held steadfast with its privilege designations until ordered otherwise.

Next, Apple blames Epic. Apple argues that its over-designation was the "ultimate consequence" of Epic's overbroad custodian and search term requests. (Dkt. No. 1330 at 14.) To boot, Apple argues that Epic failed to police *Apple's* privilege calls until months after Apple served its first privilege log, which "impaired Apple's ability to make any meaningful changes to its privilege review and logging process before the deadline." (*Id.* at 16–17.) The Court rejects Apple's fingerpointing to justify its own misconduct.

Finally, Apple urges that it should not be sanctioned because it has already borne the consequence of its discovery misconduct by re-reviewing the documents that it initially withheld for privilege. (Dkt. No. 1330 at 18.) Apple argues that because it cured compliance, punitive sanctions, as it characterizes them, are not warranted. Complying with a court order cannot be deemed a sanction. Holding otherwise would incentivize any litigant to avoid complying with unfavorable discovery rulings until ordered to do so after more litigation. The Court elaborates on a remedy *infra* Section IV.

D. Apple's Motion for Indemnification

As discussed *supra* Section I, the Ninth Circuit reversed this Court insofar as the DPLA's indemnification provision requires Epic to pay Apple's attorneys' fees related to this litigation, specifically as to Apple's counterclaim for breach of contract. *See Epic Games, Inc.*, 67 F.4th at 1004. However, the panel "express[ed] no opinion on what portion of Apple's attorney fees incurred in this litigation can be fairly attributed to Epic's breach of the DPLA." *Id.* at 1004 n.24.

On the day Apple's petition for certiorari was denied, Apple moved for entry of judgment on its indemnification counterclaim, seeking an adjusted, discounted total of $73,404,326 in attorneys' fees and costs. (Dkt. Nos. 872-3 (sealed motion), 876 (redacted).) Epic opposed (Dkt. No. 886), and below the Court considers the appropriate scope of attorneys' fees Apple may recover under the DPLA, given the nature of this litigation.

1. Legal Standard

The DPLA's indemnification provision provides, in relevant part:

> To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple's request, defend, Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys' fees and court costs (collectively, "Losses"), incurred by an Apple Indemnified Party and arising from or related to any of the following . . .: (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement . . . .

(PX-2619.40; *see also Epic Games, Inc.*, 559 F.Supp.3d at 1065–66.)

"Based on the DPLA's choice-of-law provision," the Court "interpret[s] its indemnification provision pursuant to California contact-interpretation principles." *Epic Games, Inc.*, 67 F.4th at 1003. "Under California law, '[a]n indemnity agreement is to be interpreted according to the language and contents of the contract as well as the intention of the

parties as indicated by the contract.'" *Epic Games, Inc.*, 559 F.Supp.3d at 1065 (quoting *Myers Bldg. Indus., Ltd. v. Interface Tech., Inc.*, 13 Cal.App.4th 949, 17 Cal.Rptr.2d 242, 253 (1993)); *see also* Cal. Civ. Proc. Code § 1021 ("[T]he measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . . ."). As with any contract, California courts "apply the rule that words in a contract are to be understood in their usual sense." *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 5 Cal. Rptr. 2d 154, 158 (1992).

2. Analysis

The central question in Apple's motion for entry of judgment on its indemnification counterclaim is "what portion of Apple's attorney fees incurred in this litigation can be fairly attributed to Epic's breach of the DPLA." *Epic Games, Inc.*, 67 F.4th at 1004 n.24.[69] However, it is not possible to cleanly separate what costs and fees are attributable to Epic's breach, because Epic stipulated that it breached the DPLA and "[t]he parties agree[d] that Epic's illegality defense" to Apple's claim for breach of contract "rises and falls with its Sherman Act claims." *Id.* at 999.[70]

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[69] The DPLA, as well as the Ninth Circuit's opinion, make clear that Apple is entitled to all "losses . . . , expenses and costs, including without limitation, attorneys' fees and court costs," "arising from or related to" Epic's "breach of any certification, covenant, [or] obligation" in the DPLA. PX-2619.40.

[70] "Epic Games alleges that Apple's counterclaims are barred because 'the contracts on which Apple's counterclaims are based' are 'illegal and unenforceable' on the basis that they violate the Sherman Act, the Cartwright Act, and the UCL." *Epic Games*, 559 F.Supp.3d at 1060.

In other words, Apple's fees and costs expended defending against Epic's federal claims—the bulk of Epic's affirmative case—are the same fees and costs Apple expended to ultimately win its breach of contract claim, for which Apple is entitled to indemnification under the DPLA.[71]

Centrally, Epic argues that, under California law, prevailing defendants cannot recover attorneys' fees or litigation costs incurred while defending against antitrust claims, even where the parties have entered into a fee-shifting agreement. (Dkt. No. 886 at 9–12.) Epic relies on *Carver v. Chevron U.S.A., Inc.*, 119 Cal.App.4th 498, 14 Cal. Rptr. 3d 467, 469 (2004). There, plaintiffs alleged 18 causes of action, including intentional and negligent misrepresentation, concealment, breach of contract, beach of the implied covenant of good faith and fair dealing, and violations of the Cartwright Act. The parties did "not dispute that Chevron, as prevailing party, has a contractual

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[71] The Court disagrees with Epic that its antitrust claims cannot be said to arise out of or relate to a breach of the DPLA "because they are completely independent of Epic's violation of the terms of the DPLA," and that "[i]t is undisputed that Epic's antitrust claims could have been brought against Apple even if Epic had not violated the terms of the DPLA." Dkt. No. 886 at 13. While perhaps true in theory, neither contention reflects what has in fact occurred in this litigation. Epic crafted a litigation strategy that involved a deliberate and conceded breach of the DPLA, and in turn Epic made its own antitrust claims the cornerstone defense against Apple's breach of contract counterclaim. Nor was Epic's breach without its benefits—some of the data revealed by that breach has been incorporated into this order in support of Epic's motion for enforcement. Epic's strategy involved certain risks and payoffs, and potential liability for Apple's attorneys' fees formed a possible trade-off.

right to attorney fees for defending non-Cartwright causes of action." *Id.* However, "certain claims were inextricably intertwined and could not be further separated because they had elements of both Cartwright Act and non-Cartwright Act causes of action." *Id.* at 472.

The Court of Appeal explained that "[t]he Cartwright Act contains a unilateral fee-shifting provision that allows an award of attorney fees to a prevailing plaintiff but not to a prevailing defendant." *Id.* at 471. The public policy implicit in such a nonreciprocal fee provision is, in the case of the Cartwright Act, "to encourage injured parties to broadly and effectively enforce the Cartwright Act 'in situations where they otherwise would not find it economical to sue.'" *Id.* (quoting *Covenant Mut. Ins. Co. v. Young*, 179 Cal.App.3d 318, 225 Cal. Rptr. 861, 865 (1986)). "The Legislature clearly intended to give special treatment to antitrust claims under the Cartwright Act by creating this one-way fee-shifting right for a successful plaintiff but not for a defendant who successfully defends such a claim." *Id.*

The court concluded that "[i]n light of these public policy considerations," the Cartwright Act's fee-shifting provision "prohibits an award of attorney fees for successfully defending Cartwright Act and non-Cartwright Act claims that overlap." *Id.* Permitting a defendant to recover fees for work on Cartwright Act issues "would superimpose a judicially declared principle of reciprocity on the statute's fee provision, a result unintended by the Legislature, and would thereby frustrate the legislative" public policy. *Id.*

While *Carver* concerned Cartwright Act claims, which Epic abandoned on appeal, *see Epic Games, Inc.*, 67 F.4th at 970 n.4, one federal court has

extended *Carver*'s reasoning to the defense of federal antitrust claims. In *Dominick v. Collectors Universe, Inc.*, plaintiffs asserted nine claims, which included violations of the Sherman Act, the Clayton Act, the Latham Act, the Cartwright Act, and the UCL, among other state-law tort and breach of contract claims. 2013 WL 990825, at *1 (C.D. Cal. Mar. 13, 2013). After prevailing on a motion to dismiss, defendants argued that they could "recover their fees under the Clayton Act's fee-shifting provision" and also could "recover all fees under the fee-shifting provision of the" applicable agreement. *Id.* at *2.

The *Dominick* court disagreed, explaining that "under California law, prevailing defendants may not recover attorneys' fees for successfully defending against antitrust claims, even if a contractual fee-shifting clause may have otherwise allowed for such fees. The California Court of Appeal has held that where a statute contains a unilateral fee-shifting provision for prevailing plaintiffs, courts should not allow contractual fee-shifting for prevailing defendants, as this allowance would override congressional intent." *Dominick*, 2013 WL 990825, at *5 (citations omitted) (citing *Carver*, 14 Cal.Rptr.3d at 471). Even absent a statutory fee-shifting provision, the court cited a Third Circuit case which "held that attorneys' fees may not be awarded to prevailing defendants in antitrust lawsuits absent express congressional authorization," in a case that did not involve an indemnification agreement among the parties. *See id.* at *5 (citing *Byram Concretanks, Inc.*

v. Warren Concrete Prods. Co. of N. J., 374 F.2d 649, 651 (3d Cir. 1967)).[72]

However, the Ninth Circuit appears to have rejected this approach as to Sherman Act claims in *Reudy v. CBS Corp.* Before the district court, plaintiffs argued that "the Sherman Act authorizes recovery of attorneys' fees only for successful plaintiffs," citing 15 U.S.C. § 15. *Reudy v. Clear Channel Outdoors, Inc.*, 693 F.Supp.2d 1091, 1100 (N.D. Cal. 2010), *aff'd sub nom. Reudy v. CBS Corp.*, 430 F.App'x 568 (9th Cir. 2011). The court explained that while this may be true of "certain statutes, such as the Cartwright Act," "it is not true under these facts and the statutes at issue." *Id.* Specifically, "[a]s for Plaintiffs' antitrust cause of action, Plaintiffs failed to cite any case, either in their briefing or at the hearing, in support of their argument that the Sherman Act trumps a private contract when it comes to a fee award. The only cases cited pertained to actions pursuant to the Cartwright Act." *Id.* at 1101. Thus, the court rejected plaintiffs' objections to an award of attorneys' fees relating to Sherman Act claims.

On appeal, plaintiffs posed the question of "[w]hether the district court erred in awarding attorney fees on the Sherman Act cause of action." Opening Brief of Appellants, *Reudy v. CBS Corp.*, No. 10-15533 (9th Cir. June 10, 2010), 2010 WL 6762022. In an unpublished opinion, the Ninth Circuit

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[72] *See also Byram*, 374 F.2d at 651 ("We hold that in the absence of specific legislative authorization attorneys' fees may not be awarded to defendants in private anti-trust litigation. Our conclusion is based on policy considerations reflected in the Clayton Act.").

succinctly affirmed: "There is no support for appellants' contention that the fee-shifting rule applicable to antitrust claims displaces the different rule set forth in the agreement." *Reudy*, 430 F.App'x at 569.

As applied to this case, the Court finds that Apple's requested fee award does not appropriately account for *Carver*. Apple calculated its total litigation expenses through October 31, 2023, at $82,971,401, and "to ensure every dollar is covered by the DPLA" adjusted that total down to $81,560,362. (Dkt. No. 876 at 15.) Then, because Apple "won 9 out of 10 claims that Epic asserted challenging the DPLA" as well as Apple's own breach of contract counterclaim, Apple discounted its adjusted total by 10%, to $73,404,326. Absent *Carver*, this could be a sensible starting point. However, the California Court of Appeal was clear that the Cartwright Act's fee-shifting provision "prohibits an award of attorney fees for successfully defending Cartwright Act and non-Cartwright Act claims that overlap." *Carver*, 14 Cal. Rptr. 3d at 471. Here, that ultimately means that Apple is entitled to attorneys' fees and expenses covering its defense against Epic's Sherman Act claims that do *not* overlap with Apple's defense against Epic's Cartwright Act claims.[73] Said differently, the question is what *unique* attorneys'

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[73] That said, Epic overreaches by seeking to apply *Carver*'s rule to all federal antitrust claims, in particular here Epic's Sherman Act claims. While *Dominick* provides support for Epic's argument, this Court will defer to the Ninth Circuit's unpublished holding in *Reudy* and find that the fee-shifting rules articulated in *Carver* or otherwise do not displace Apple's contractual indemnity for attorneys' fees expended in defense of Epic's illegality defense under the Sherman Act.

fees or expenses did Apple incur in defense against Epic's Sherman Act claims that were not also incurred in defense against Epic's Cartwright Act claims.

To summarize, this is because, first, the DPLA provides that Apple's indemnity extends to its attorneys' fees and expenses arising from or relating to Epic's breach of the DPLA, i.e., Apple's breach of contract counterclaim. Second, the parties agreed that the success of Apple's breach of contract claim was coextensive with Apple's defense against Epic's Sherman Act claims, because Epic stipulated to breach of the DPLA and only argued an illegality defense under the Sherman Act. Thus, given Apple's success as to the Sherman Act claims, the DPLA entitles Apple to attorneys' fees and expenses incurred in its defense against those claims. However, *Carver* limits that award to the extent it overlaps with Epic's Cartwright Act claims. *See Carver*, 14 Cal. Rptr. 3d at 473 ("When a defendant incurs attorney fees for successfully defending both Cartwright Act and non-Cartwright Act claims, the portion of those fees related exclusively or by 'inextricable overlap' to Cartwright Act claims are not recoverable.").

The Court declines to attempt an estimate in the first instance. Apple bears the burden of identifying those attorneys' fees and costs that it can attribute solely to the breach of the DPLA and/or its defense against Epic's Sherman Act claims that did not overlap with its defense of Epic's Cartwright Act claims.[74] The Court **DENIES WITHOUT PREJUDICE**

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[74] The Court notes that the parties' prior representations, as always, are relevant. For instance, at trial Epic argued that

Apple's motion for entry of judgment on its indemnification counterclaim.

Next, the parties dispute whether Apple is entitled to collect costs and expenses in addition to attorneys' fees. Epic argues that Apple's recovery of any "losses" other than attorneys' fees exceeds the Ninth Circuit's mandate, which provided that this Court is to determine "what portion of Apple's *attorney fees* incurred in this litigation can be fairly attributed to Epic's breach of the DPLA." (Dkt. No. 886 at 17 (quoting *Epic Games, Inc.*, 67 F.4th at 1004 n.24 (emphasis supplied)).) On the other hand, Apple points to the expansive language of the DPLA—notably, that the indemnification provision covers "any and all" "expenses and costs" and "losses," "including without limitation, attorneys' fees and court costs." (PX-2619.40; *see also* Dkt. No. 876 at 12–14.) The Court agrees with Apple. Nowhere did the Ninth Circuit hold that Apple is prohibited from recovering costs and expenses arising from or related to Epic's breach of contract. Rather, the Ninth Circuit recited the DPLA's expansive language that includes costs "without limitation," and the scope of the question presented on appeal was simply focused on

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"even if its claims under the Sherman Act fail, it is nevertheless entitled to relief on its Cartwright Act claims because the Cartwright Act is broader in range and deeper in reach than the Sherman Act." *Epic Games, Inc.*, 559 F.Supp.3d at 1048. Apple disagreed, arguing that Epic had "not identified any specific and material differences between the Cartwright Act and the Sherman Act," and so could not "prevail on a Cartwright Act where its claims fail under the Sherman Act." *Id.*

Given the lack of an appropriate accounting, the Court takes no position on whether Apple can include attorneys' fees which may have overlapped with the related *Cameron* and *Pepper* actions. (Dkt. No. 886 at 16.)

"attorneys' fees." *See Epic Games, Inc.*, 67 F.4th at 1004 & n.24.

Finally, Epic argues that Apple failed to meet and confer with Epic pursuant to Federal Rule of Civil Procedure 54(d), which Apple claims does not apply to its motion for entry of judgment. Apple's "restyling" of its request for attorneys' fees as a motion of entry of judgment does not persuade. Judgment was entered on September 10, 2021 at Docket No. 814. Apple filed an appeal thereon. Rule 54(d)(2)(A) requires claims to attorneys' fees to be asserted by way of motion "unless the substantive law requires those fees to be proved at trial as an element of damages." California Civil Code § 1717(a) allows the prevailing party to recover attorneys' fees in a contract dispute "as an element of the cost of the suit" and requires that reasonable fees be "fixed by the court." The Ninth Circuit has read those rules in tandem to mean that contract provisions for attorney's fees "are not an element of damages to be proved at trial" and, therefore, Rule 54(d) applies. *Port of Stockton v. W. Bulk Carrier KS*, 371 F.3d 1119, 1121 (9th Cir. 2004) (internal quotations omitted); *see also Zhu v. Li*, 2023 WL 4770431, at *1 (N.D. Cal. July 26, 2023); *Instrumentation Lab'y Co. v. Binder*, No. 11-cv-965, 2013 WL 12049072 (S.D. Cal. Sept. 18, 2013), aff'd, 603 F. App'x 618 (9th Cir. 2015) (applying Rule 54(d) to recover indemnity award). Apple's suggestion to the contrary is merely an attempt to avoid the rules. The district's local rule 54-5, as authorized by Rule 54(d)(2)(D), requires parties to meet and confer in advance of filing any motion. Compliance is required.

With respect to Apple's argument that Epic has not challenged the reasonableness or accuracy of

Apple's calculations of its attorneys' fees, costs or expenses, the Court finds the issue premature given the parties' misapplication of the standard and because Apple failed to provide evidentiary support for its request. (Dkt. No. 886 at 3–4.) Anticipating further disputes on this topic, if the parties cannot agree on the reasonable amount of attorneys' fees and costs, the Court orders the issue referred to a special master of the parties choosing under Rule 54(d)(2)(D). In the first instance, the parties shall split the costs of the special master. However, the special master may reallocate the costs if appropriate.

V. RELIEF AND SANCTIONS

"District courts have broad equitable power to order appropriate relief in civil contempt proceedings." *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003). That broad power includes "the inherent authority to enforce compliance with its orders," *Craters & Freighters v. Daisychain Enterprises*, 2014 WL 2153924, at *1 (N.D. Cal. May 22, 2014), as well as issuance of "[s]anctions . . . to coerce obedience to a court order, or to compensate the party pursuing the contempt action for injuries resulting from the contemptuous behavior, or both." *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986).

With respect to violations of a permanent injunction, a civil contempt order may clarify the terms of the injunction to coerce compliance. *See, e.g., H.I.S.C., Inc. v. Franmar Int'l Importers, Ltd.*, 2022 WL 104730, at *6 (S.D. Cal. Jan. 11, 2022). Analogous here, "a party who has once infringed is allowed less leniency for purposes of injunction enforcement than an innocent party." *Forever 21, Inc. v. Ultimate*

Offprice, Inc., 2013 WL 4718366, at *3 (C.D. Cal. Sept. 3, 2013) (trademark-infringement actions). An "infringer must keep a fair distance from the 'margin line.'" *Wolfard Glassblowing Co. v. Vanbragt*, 118 F.3d 1320, 1323 (9th Cir. 1997) (same).

With respect to monetary sanctions, "[p]rior to issuing a coercive civil contempt order, a court should weigh all the evidence properly before it determines whether or not there is actually a present ability to obey and whether failure to do so constitutes deliberate defiance or willful disobedience which a coercive sanction will break." *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 781 n.6 (9th Cir. 1983).

Apple was afforded ample opportunity to respond to the Injunction. It chose to defy this Court's order and manufacture *post hoc* justifications for maintaining an anticompetitive revenue stream. Apple's actions to misconstrue the Injunction continue to impede competition. This Court will not play "whack-a-mole," nor will it tolerate further delay.

Accordingly, for the reasons set forth herein, and good cause appearing, the Court **PERMANENTLY RESTRAINS AND ENJOINS** Apple Inc. and its officers, agents, servants, employees, and any person in active concert or participation with them, from:

1. Imposing any commission or any fee on purchases that consumers make outside an app, and as a consequence thereof, no reason exists to audit, monitor, track or require developers to report purchases or any other activity that consumers make outside an app;
2. Restricting or conditioning developers' style, language, formatting, quantity, flow or

placement of links for purchases outside an app;

3. Prohibiting or limiting the use of buttons or other calls to action, or otherwise conditioning the content, style, language, formatting, flow or placement of these devices for purchases outside an app;
4. Excluding certain categories of apps and developers from obtaining link access;
5. Interfering with consumers' choice to proceed in or out of an app by using anything other than a neutral message apprising users that they are going to a third-party site; and[75]
6. Restricting a developer's use of dynamic links that bring consumers to a specific product page in a logged-in state rather than to a statically defined page, including restricting apps from passing on product details, user details or other information that refers to the user intending to make a purchase.

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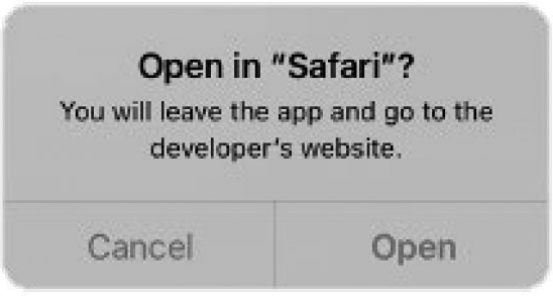
[75] The Court pre-authorizes the "dialogue" version of Apple's screen in advance so as not to hinder developer progress:



CX-520.39 (middle example); *see* Feb. 2025 Tr. 1333:25–1334:17, 1335:10–16 (Onak).

As these are *restrictions* on the specific actions Apple took to violate this Court's Injunction and as they require no affirmative action on Apple's part, the **INJUNCTION IS EFFECTIVE IMMEDIATELY**. The Court will not entertain a request for a stay given the repeated delays and severity of the conduct.

Time is of the essence. Every day since January 16, 2024, the date of the Supreme Court's refusal to hear its appeal, Apple has sought to interfere with competition and maintain an anticompetitive revenue stream. This Injunction terminates the conduct.

* * *

THE COURT FURTHER FINDS that Apple's abuse of attorney-client privilege designations to delay proceedings and obscure its decision-making process warrants sanction to deter future misconduct. Apple is **SANCTIONED** in the amount of the full cost of the special masters' review and Epic's attorneys' fees on this issue alone through approximately May 15, 2025, the anticipated date of completion. (Dkt. No. 1459.) The parties shall meet and confer on the actual amount due. Any dispute shall be submitted to the special masters by motion for review in the first instance.

* * *

MOREOVER, a more significant response may be warranted.

Despite Apple's misconduct, civil contempt sanctions are limited to instances where a sanction would "coerce obedience to a court order" or "compensate the party pursuing the contempt action for injuries resulting from the contemptuous behavior." *Gen. Signal Corp. v. Donallco, Inc.*, 787

F.2d 1376, 1380 (9th Cir. 1986); *see also United States v. Mine Workers*, 330 U.S. 258, 303–304, 67 S.Ct. 677, 91 L.Ed. 884 (1947). Compensatory sanctions are limited to a party's "actual loss." *Id.* Epic Games does not, at this juncture, seek sanctions. Should Apple again attempt to interfere with competition and violate the Court's injunctive relief, civil monetary sanctions to compel compliance may be appropriate.

By contrast, criminal contempt sanctions are "punitive," and are meant to punish past misconduct and deter future noncompliance. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994); *Oracle USA, Inc. v. Rimini St., Inc.*, 81 F.4th 843, 858 (9th Cir. 2023) ("Criminal contempt sanctions are 'punitive'—meant to punish prior offenses"); *Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, 926 F.3d 534, 538 (9th Cir. 2019) ("[D]eterrence is one of the purposes served by compensatory and punitive awards alike.") Sanctions paid to the public or to parties outside of the proceeding are categorized as criminal. *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 632, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988). With criminal sanctions comes additional proceedings where "punitive sanctions may not be imposed without the constitutional protections afforded ordinary criminal proceedings." *Oracle*, 81 F.4th at 858.

Due process and a potential punitive sanction require government, not private, involvement. *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444–45, 31 S.Ct. 492, 55 L.Ed. 797 (1911) ("Proceedings for civil contempt are between the original parties, and are instituted and tried as a part of the main cause. But, on the other hand, proceedings at law for criminal contempt are between

the public and the defendant, and are not a part of the original cause.")[76]; *Int'l Union, United Mine Workers*, 512 U.S. at 834, 114 S.Ct. 2552 ("Under these circumstances, criminal procedural protections such as the rights to counsel and proof beyond a reasonable doubt are both necessary and appropriate to protect the due process rights of parties and prevent the arbitrary exercise of judicial power.")

Accordingly, under Rule 42(a)(2) of the Federal Rules of Criminal Procedure, the Court refers the issue to the United States Attorney for the Northern District of California, Patrick D. Robbins, or his designee(s), for investigation against Apple and Alex Roman, Apple's Vice President of Finance specifically. The Court takes no position on whether a criminal prosecution is or is not warranted. The decision is entirely that of the United States Attorney. It will be for the executive branch to decide whether Apple should be deprived of the fruits of its violation, in addition to any penalty geared to deter future misconduct.

* * *

Apple *willfully* chose not to comply with this Court's Injunction. It did so with the express intent to create *new* anticompetitive barriers which would, by design and in effect, maintain a valued revenue stream; a revenue stream previously found to be anticompetitive. That it thought this Court would tolerate such insubordination was a gross miscalculation. As always, the cover-up made it

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[76] Corporations have due process rights with respect to criminal sanctions. *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770 (9th Cir. 1983)

worse. For this Court, there is no second bite at the apple.

IT IS SO ORDERED.[77]

ATTACHMENT A

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[77] This terminates Dkt. Nos. 876, 897, 1018, 1198, and 1328. All material redacted in this Order is sealed. If not redacted, the request to do so is denied. All exhibits admitted during the evidentiary hearing shall be filed on the docket within five business days.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC., Plaintiff, vs. **APPLE INC.,** Defendant.	No. 4:20-cv-05640-YGR **PERMANENT INJUNCTION**
AND RELATED COUNTERCLAIM	

The Court, having considered the evidence presented at the bench trial in this matter and consistent with its findings of fact and conclusions of law, **HEREBY ORDERS** as follows:

1. Apple Inc. and its officers, agents, servants, employees, and any person in active concert or participation with them ("Apple"), are hereby permanently restrained and enjoined from prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app.

2. Any party may seek modification of this Order, at any time, by written motion and for good cause based on changed circumstances or otherwise.

3. The Court will retain jurisdiction over the enforcement and amendment of the injunction. If any

part of this Order is violated by any party named herein or any other person, plaintiff may, by motion with notice to the attorneys for defendant, apply for sanctions or other relief that may be appropriate.

4. This injunction will take effect in ninety (90) days.

IT IS SO ORDERED.

Dated: September 10, 2021

s/ Yvonne Gonzalez Rogers

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

FILED
MAR 30 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EPIC GAMES, INC., Plaintiff-ctr-defendant - Appellee, v. APPLE INC., Defendant-ctr-claimant - Appellant.	No. 25-2935 D.C. No. 4:20-cv-05640-YGR Northern District of California, Oakland ORDER

Before: S.R. THOMAS and M. SMITH, Circuit Judges, and McSHANE, Chief District Judge.*

The panel unanimously votes to deny the petition for panel rehearing. Judge M. Smith votes to deny the petition for rehearing en banc, and Judge S.R. Thomas and Judge McShane so recommend. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40. The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

* The Honorable Michael J. McShane, United States Chief District Judge for the District of Oregon, sitting by designation.