No. 25-1311

In the
Supreme Court of the United States

APPLE INC.,
Petitioner,
v.
EPIC GAMES, INC.,
Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

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.

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

JURISDICTION

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

INTRODUCTION

The power to hold parties in contempt for violating court orders is among the most potent a federal court can exercise. To guard against the abuse of that authority, this Court has held for over 140 years that a party may not be held in civil contempt unless there is no "*fair ground of doubt*" that it violated a court order providing explicit notice of what conduct is proscribed. *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019) (quoting *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)). Most federal courts follow that basic proposition. But not the Ninth Circuit. In its decision below, the Ninth Circuit reaffirmed its rule that "parties may be held in contempt for violating the spirit of an injunction," even when an injunction's text does not address the conduct at issue. Pet.App.12a, 34a n.9. The Ninth

Circuit applied that spirit-based rule to hold Apple in contempt for engaging in conduct based on a 75-word injunction that was silent as to that conduct, in place of the explicit notice this Court demands.

The Ninth Circuit's outlier, spirit-based rule for imposing civil contempt should be rejected. Whereas this Court's fair ground of doubt standard requires "'explicit notice'" that the conduct at issue is outlawed by the relevant order, *Taggart*, 587 U.S. at 561 (citations omitted), the Ninth Circuit's spirit-based rule is a recipe for doubt. Instead of ensuring that parties receive clear notice of what is prohibited upfront, the Ninth Circuit's rule invites a subjective, after-the-fact inquiry in which a party can be held in contempt for conduct that the order does not address. That approach not only fails to afford parties the explicit notice this Court's precedents require, but it also amplifies the unique risk of abuse threatened by the contempt power. Courts have the power to modify or clarify injunctions on a going-forward basis to address new or changed circumstances, but the severe remedy of contempt is limited to situations in which a party violates the unambiguous terms of an order.

This case showcases the problems with the Ninth Circuit's approach. Epic sued Apple under federal antitrust laws and California's Unfair Competition Law, contending that Apple's developer rules concerning in-app purchases and related practices were illegal. JA83-84. After a bench trial, the district court rejected Epic's federal antitrust claims. Instead, the court found that Apple violated only the California UCL. Pet.App.3a. The court based that finding on Apple's adoption of certain anti-steering guidelines barring developers from telling users about non-Apple purchasing mechanisms. *Id.* To remedy that "informational harm," Pet.App.34a n.9, the district court fashioned a "narrow" remedy of "invalidating the offending provisions." JA374, 380. Specifically, the court issued a 75-word injunction that barred Apple from "prohibiting" developers from "including" in their mobile apps "buttons, external links, or other calls to action" that direct users to other purchasing mechanisms besides Apple's in-app purchasing system. Pet.App.166a.

Apple complied with that decree. Apple repealed the anti-steering guidelines explicitly targeted by the injunction and replaced them with brand new guidelines *allowing* the use of buttons, external links, or other calls to action directing users to other purchasing methods. JA501, 505-07, 531-33. Separately, Apple also informed the district court, in a notice of compliance, that it would begin charging a commission on that new class of out-of-app (or link-out) purchases. JA517-20. That commission would ensure that Apple continued to receive compensation for the use of its IP-protected tools, technologies, and services, and for affording developers access to its vast user base. JA518-19. After all, whether a purchase of a digital good is made within or outside an app, the developer gains access to Apple's user base and benefits immensely from Apple's iOS platform, the iPhone, and the App Store. The district court itself recognized that Apple is entitled to compensation, irrespective of whether developers use its in-app purchasing system. *See* JA347-48.

Epic admitted that the injunction "did not explicitly prohibit" Apple's new commission on link-out purchases. JA549. Nevertheless, invoking the Ninth Circuit's spirit-based rule, Epic moved to hold Apple in contempt for violating the injunction's purpose. JA547-50. The district court embarked on a protracted contempt proceeding, probing all aspects of Apple's internal discussions on how to comply with the injunction. *See* Pet.App.51a, 69a-115a. The court then invoked the Ninth Circuit's spirit-based rule and held Apple in civil contempt for, as the court saw things, willfully frustrating the purpose of its injunction. *See* Pet.App.131a-41a. Applying its spirit-based approach, the Ninth Circuit affirmed, even while acknowledging that the "[i]njunction does not address commissions at all." Pet.App.34a n.9.

Apple takes seriously its obligation to follow court orders—and would never intentionally disregard a court order. But the contempt inquiry is "*objective*" and requires "'explicit notice'" of the prohibited conduct. *Taggart*, 587 U.S. at 561 (citation omitted). The injunction here did not come close to providing the requisite notice as to the separate conduct for which the district court held Apple in contempt. Indeed, it is undisputed that the injunction does not even mention commissions, the major issue. Nor did the injunction bar the particular design guidelines Apple implemented for link-out purchases. At a bare minimum, there was a fair ground of doubt as to whether the conduct at issue was proscribed. Because it is based on an erroneous legal standard—and cannot stand under the controlling standard—the Ninth Circuit's contempt ruling should be reversed and its related remand instructions vacated.

STATEMENT OF THE CASE

A. Apple's Development Of The iPhone, iOS, And The App Store

In 2007, Apple revolutionized the smartphone industry by introducing the iPhone, a device that makes calls, plays music, accesses the internet, and—most relevant here—allows consumers to use countless mobile apps. *See* JA127-28. At first, iPhone users could interact only with native apps developed by Apple. JA128. But soon after releasing the first iPhone, Apple opened its mobile operating system, called iOS, to allow third-party developers to create and distribute apps. JA128, 415. With the iPhone and iOS, Apple created the first and most advanced mobile app ecosystem ever.

To allow for easy distribution of apps and in-app content to users, Apple pioneered a mobile marketplace—the App Store—where developers can distribute, and users can download, third-party apps. Today, registered iOS developers create and distribute millions of mobile apps through the App Store. *See* JA131, 143. As a result of the virtually limitless variety of apps available on iOS through the App Store, iPhone users can follow sports, interact on social media, manage finances, hail rides, order food, watch media, shop, play games, and more.

Apple invests heavily in the App Store platform and the IP-protected technologies that underpin it. *See* JA139, 277. For developers, Apple provides valuable services, including: ensuring apps do not contain malware or offensive content, easing the creation of new apps through a "software development kit," hosting apps on the App Store platform, processing app updates for end-users, and facilitating mobile app transactions totaling hundreds of billions of dollars per year through Apple's in-app purchase system, known also as IAP, which allows users to buy digital goods, currency, or other digital content within an app. *See* JA130, 139, 262-65, 269-70, 416; Pet. 5 & n.3.

Developers must pay a $99 annual fee—the purpose of which is to combat fraud—to create and distribute apps on the App Store. JA131. As a result, anyone with an idea for an innovative mobile app can create and distribute it to Apple's users at almost no upfront cost. But to compensate Apple for the enormous and ongoing value it provides developers—including through its IP-protected tools and technologies underlying iOS—Apple charges developers a commission, which applies to downloads of paid apps and in-app purchases of digital goods. *See* JA418. The commission also accounts for Apple's handling of payment processing and related services, which developers would otherwise have to handle, JA193-94, and it ranges from 15-30%, depending on the kind of developer and transaction at issue, JA141.

B. Apple's Developer Guidelines

To distribute an app on iOS, a developer must register its app and agree to Apple's developer guidelines. Those guidelines prevent developers from distributing iOS apps through any marketplace other than the App Store. Historically, they also required developers to use Apple's purchase mechanism (IAP), to sell in-app digital content to iOS users, and prevented developers from "steering" users to alternative purchasing mechanisms. JA418-19.

Before this lawsuit, the anti-steering provisions contained two main prohibitions. First, the guidelines prohibited 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)." JA374-75 (alteration in original) (citation omitted). And, second, the guidelines prohibited developers from "includ[ing] 'buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase.'" JA374 (quoting JA29-30 (Section 3.1.1)).

Pursuant to the developer guidelines, a user who wished to purchase digital content within an app had to use IAP. JA418. That setup protected Apple's ability to receive a commission for the purchase of digital content, ensuring that Apple could be compensated for the value it provides developers, including through its IP-protected tools, technologies, and services underlying iOS and the App Store.

C. Epic's Lawsuit And The District Court's Injunction

Epic is one of the largest mobile gaming developers in the world. In 2021, it was valued at $28.7 billion. JA89. Epic's flagship game is *Fortnite*, a cooperative shooter game with over 400 million registered players around the world. JA94. Epic monetizes *Fortnite* by charging users for virtual currency that can be used to purchase in-game features. JA100. For instance, a user can buy "skins," which are digital costumes for their *Fortnite* character, or "emotes," which allow their character to dance or taunt others with physical moves. *See id.* Like many other developers, Epic makes *Fortnite* and other games available on iOS, JA103-04, thereby benefiting from the services Apple provides developers and gaining access to Apple's technologies and its enormous user base, JA418. In 2018-2020, *Fortnite* yielded Epic "more than $700 million [in revenue] across over 100 million iOS user accounts" in "only two short years." JA105.

In 2020, Epic brought this action against Apple alleging, among other things, violations of the Sherman Act and California's Unfair Competition Law on the asserted grounds that Apple's App Store distribution and IAP requirements are anticompetitive and unfair. Pet.App.3a. Epic did not separately challenge Apple's anti-steering rules; instead, it pointed to the anti-steering rules as one way in which Apple requires developers to use IAP. Compl. ¶¶ 128-34, 184-291, Dkt. 1.

After a bench trial, the district court rejected Epic's antitrust claims in their entirety. Pet.App.3a. Among other things, the court recognized that Apple's business model has procompetitive benefits for developers and consumers. JA362. The court also recognized that IAP "is the method by which Apple collects its licensing fee from developers for the use of Apple's intellectual property." JA347. The court thus explained that "Apple is entitled to *some* compensation for use of its intellectual property." JA348. And it recognized that, "[e]ven in the absence of IAP," "Apple could still charge a commission on developers." JA347. The court also found that IAP furthers "security" interests and enhances the "quality of the experience" on iOS. JA348.

The district court held, however, that Apple's anti-steering rules violated the California UCL. JA373-79. The court explained that Apple's prohibition on communications steering users elsewhere and its limitation on in-app design elements—like buttons, external links, or other calls to action directing users to other purchasing mechanisms—meant that "developers cannot communicate lower prices on other platforms either within iOS or to users obtained from the iOS platform." JA374-75. Reasoning that "the open flow of information" is "critical," the court held that these provisions violated the UCL "by preventing informed choice among users of the iOS platform." JA376.

To redress this UCL violation—the only violation the district court found—the court issued what it called a "narrow remed[y]," JA373-74, implementing the "limited measure" of "invalidating the offending [anti-steering] provisions" in Apple's developer guidelines, JA380-81. In a separate "Permanent Injunction," the district court declared:

> 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.

Pet.App.166a.

The district court's injunction mirrored—almost word-for-word—Apple's anti-steering guidelines. Whereas Apple's guidelines had provided that developers may not include as design elements in their apps "buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase," JA135 (emphasis omitted) (quoting Section 3.1.1), the injunction barred Apple from "prohibiting developers from . . . including . . . buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing," Pet.App.166a. Part ii of the injunction likewise tracked Apple's guidelines. *Compare* JA136 (quoting guidelines), *with* Pet.App.166a.

Both Apple and Epic appealed, and the Ninth Circuit stayed the injunction pending appeal. *Epic Games, Inc. v. Apple, Inc.*, Nos. 21-16506, 21-16695, 2021 WL 6755197 (9th Cir. Dec. 8, 2021). The Ninth Circuit subsequently affirmed in relevant part. JA429. As to the UCL violation, the Ninth Circuit pointed to the district court's finding that "Apple's anti-steering provision violates the UCL's unfair prong." JA485. Both parties sought certiorari in this Court, and this Court denied review.

D. Apple's Compliance Plan And Epic's Motion To Enforce The Injunction

On January 16, 2024—the same day this Court denied certiorari—Apple filed a notice of compliance in the district court. JA500-22. The notice detailed the steps Apple had taken to comply with the injunction and flagged its new commission structure.

First, for the App Store's U.S. storefront, Apple explained that it excised its guideline preventing the inclusion of "buttons, external links, or other calls to action." In its place, Apple created a new guideline providing for an "External Purchase Link Entitlement." JA505-07. The new guideline explained that this "link may inform users about where and how to purchase" items, and "that such items may be available for a comparatively lower price." JA506. The guideline further provided that developers could include in their apps buttons, external links, or other calls to action informing users about alternative purchasing methods, JA506-07—precisely what the injunction required.

For "buttons," the new guidelines directed developers to use Apple's preexisting "Plain Button style"—a button without any background contrasting fill, and which users can "press" to be linked to external purchase methods. Dkt. 1324 at 22. Use of the plain button style helps avoid confusion because it matches what users typically see when clicking a design element that directs them to an external website on the internet. Pet.App.98a. And for "calls to action," Apple allowed developers to select from certain templates, such as "Lower price offered" or "Buy for $X.XX." Pet.App.23a.

Second, Apple noted that it had revised its guidelines—as part of settling a different lawsuit—to provide that "[d]evelopers can send communications outside of the app to their user base about purchasing methods other than in app purchase." JA521. Based on these changes to its developer guidelines, Apple stopped enforcing the two guidelines targeted by the district court's injunction and allowed developers to disseminate information about alternative purchasing methods to users—both within apps through design elements like buttons and links, and outside apps through communications via text, email, and the like. Apple's new rules contained certain other design elements, including a disclosure telling users they were leaving the iOS and IAP ecosystem to make a purchase on a different platform, so they understood Apple could not guarantee the security or privacy of the transaction. JA511-12.

Third, Apple informed the district court that to protect Apple's ability to obtain compensation for the use of its IP-protected tools, technologies, and services, Apple's new guidelines imposed a commission on purchases of digital goods and services made via link-out transactions. JA517-19. The commission rate would range between 12% and 27% depending on the type of transaction and the size of the developer, and it would apply only to those purchases made within seven days of when a user clicked an in-app link to an external purchasing mechanism. JA518. Apple determined that the effective commission would be lower than 12% or 27%, given that a developer would pay no commission on purchases made outside of the seven-day window. *See id.* And developers would pay no commission if the user completed a purchase via a text or email from a developer, instead of via an in-app link-out.

Just like the commission on IAP transactions, the link-out commission compensates Apple for the value it provides developers and provides a return on Apple's investments in creating and operating the IP-protected technologies and marketplace that attract developers and users. JA518. The commission accounts for the fact that, regardless of whether digital content used on an app is purchased within or outside an app, the iOS developer still benefits from the value of Apple's innovations that make apps safe, secure, and possible, and from access to Apple's vast user base. JA519. Apple conducted extensive deliberations on the appropriate link-out commission during which a range of views was presented, including some arguing for no commission. Pet.App.69a-92a. Apple also retained an outside consulting firm to assist it in determining an appropriate commission. Pet.App.16a.

After Apple filed its notice of compliance on January 16, 2024, the district court did not raise any immediate concern. JA500. Eight weeks later, Epic moved to enforce the injunction and hold Apple in civil contempt. JA523-57. Epic argued that Apple's compliance plan violated Part (i) of the injunction; it raised no objection as to Part (ii), concerning communications with users generally. In its motion, Epic acknowledged that the UCL violation was predicated on the "information[al]" harm identified by the district court based on Apple's anti-steering guidelines. JA529-30. Epic acknowledged that Apple had deleted the "blanket prohibition on steering" enjoined by Part (i) of the injunction. JA526. And Epic admitted that the injunction "did not explicitly prohibit" Apple's new commission. JA549.

Nevertheless, Epic claimed that Apple should be held in contempt based on its "new fee on purchases made outside the app" and Apple's new design rules for buttons, calls to action, and certain other features. JA544-56. Invoking the Ninth Circuit's spirit-based standard for contempt, Epic argued that Apple's new link-out commission and related rules "subvert[ed] the purpose of the Injunction." JA526, 547-49 (citing, *e.g.*, *Institute of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 949 (9th Cir. 2014)). Epic also argued that Apple violated the injunction by regulating the kinds of "buttons" and "calls to action" a developer could use. JA552-53.

In May 2024, the district court convened a six-day evidentiary hearing. Pet.App.66a-67a. After the hearing, the court ordered extensive discovery into Apple's decision to adopt its new commission, Dkt. 974, even though Epic itself had not requested such discovery. The court resumed the evidentiary hearing for three days in February 2025, after which it was concluded. Pet.App.68a-69a; Dkts. 1347-1349.

E. Decisions Below

On April 30, 2025, the district court entered an order holding Apple in civil contempt. Pet.App.1a-49a. At the outset, the court rejected the notion that the contempt inquiry was limited to the "four corners of the injunction" and, instead, invoked Ninth Circuit precedent holding 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.'" Pet.App.131a (quoting *Sea Shepherd,* 774 F.3d at 949). According to the district court, Apple improperly sought to "evade the injunction's goals." Pet.App.132a, 135a-141a.

Unable to identify any text that expressly forbade Apple from charging a commission on link-out purchases, the district court found that Apple was in contempt because it acted to "maintain its anticompetitive revenue stream" by charging its link-out commission. Pet.App.51a. As to Apple's design rules, the district court recognized that it was "literally true" that Apple "no longer categorically prohibits developers from using buttons or other calls to action." Pet.App.139a-40a. But the court held that Apple "violated the central mandate of this Court's orders: that Apple not foreclose competitive alternatives to IAP." Pet.App.140a. The court then reasoned that it "need not decide whether" various design restrictions "alone violate the Injunction." *Id.*

Based on its contempt finding—and without conducting any separate remedies proceeding—the district court issued a contempt order that outright prohibited Apple from "[i]mposing any commission" on link-out purchases. Pet.App.159a. The order further barred Apple from "[r]estricting or conditioning developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app," and "[p]rohibiting 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." Pet.App.159a-60a. The court also referred the contempt issue to the U.S. Attorney for the Northern District of California to determine whether criminal proceedings against Apple and one of its executives were warranted. Pet.App.163a.

The Ninth Circuit affirmed in part, reversed in part, and remanded. Pet.App.48a-49a. The court began its contempt analysis with a discussion of "**The Injunction's Spirit**," in which it highlighted the court's prior *Sea Shepherd* decision. Pet.App.11a (heading); *see* Pet.App.11a-13a. After describing *Sea Shepherd,* the court declared: "In short, *Sea Shepherd* means what it says: parties may be held in contempt for violating the spirit of an injunction." Pet.App.12a.

As to Apple's commission, the Ninth Circuit acknowledged that "the text of the [i]njunction does not address commissions at all." Pet.App.34a n.9. But, according to the court, the injunction's "spirit" prevented Apple from charging what the court called a "prohibitive commission[]." *Id.* (emphasis omitted). The court also reasoned that, because the injunction used the word "prohibit," it enjoined any commission with a "prohibitive effect." Pet.App.19a-20a.

The Ninth Circuit also affirmed the contempt findings as to Apple's design rules. Pet.App.22a-25a. As to buttons, the Ninth Circuit recognized that Apple "allowed developers to use something it calls a 'plain button,'" but the court reasoned that "the 'plain button' is no button at all" because it "'may not be enclosed in a shape that uses a contrasting background fill.'" Pet.App.23a (citation omitted). As for calls to action, the Ninth Circuit recognized that Apple's new guidelines allow developers to choose from "five different templates," but the court held that "[b]y limiting developers to particular, limited templates, Apple violated the Injunction." *Id.* And as to the remaining design rules at issue, the Ninth Circuit assumed "Apple did not violate the strict letter of the Injunction" but held that the rules violated the injunction's spirit. *See* Pet.App.22a-24a.

Although it affirmed the district court's contempt findings, the Ninth Circuit reversed the district court's sanction barring Apple from charging any commission on link-out purchases, and it modified certain of the district court's design rules regarding how developers may direct users to alternative purchasing mechanisms. Pet.App.48a-49a. The court thus remanded to the district court with instructions to "amend the April 30 Order's commission prohibition." Pet.App.34a; *see* Pet.App.34a n.9.

In discussing "possible courses of action to the district court" on remand, the Ninth Circuit opined that any commission on linked-out purchases should be confined to "costs that are genuinely and reasonably necessary for [Apple's] coordination of external links for linked-out purchases, but no more." Pet.App.35a. Epic itself never argued for such a limitation, and the issue was not briefed. Separately, the Ninth Circuit directed that "[t]he district court must be mindful of the threshold upon which commissions become 'prohibitive.'" Pet.App.34a n.9.

After this Court granted certiorari, the district court denied Apple's motion to stay the remand proceedings pending this Court's decision, and Justice

Kagan denied a similar request. Order, No. 26A194, *Apple Inc. v. Epic Games, Inc.* (Aug. 13, 2026).

SUMMARY OF ARGUMENT

This Court should reject the Ninth Circuit's outlier, spirit-based standard for assessing civil contempt and reaffirm that civil contempt may not be imposed unless a court order leaves no fair ground of doubt that the conduct at issue is forbidden. Applying the fair ground of doubt standard, the Court should hold that Apple cannot be held in contempt here. And if the Court concludes that the contempt finding cannot stand because it was based on an improper standard, the Court should at least vacate the Ninth Circuit's contempt ruling and related remand instructions. That ruling cannot survive without the contempt finding on which it is predicated.

I. As this Court has long recognized, the risk of abuse inherent in the exercise of the contempt power requires careful guardrails on the exercise of that power. For more than 140 years, this Court has held that parties may not be held in contempt unless an order leaves no fair ground of doubt that it covers the conduct giving rise to contempt. The Ninth Circuit's spirit-based rule is antithetical to that standard. The spirit standard subordinates an order's plain text to abstract notions of purpose, eschews the explicit notice this Court has long required before imposing contempt, and heightens the risk of abuse by inviting post hoc assessments of an order's purpose. The Ninth Circuit's approach also contravenes Federal Rule of Civil Procedure 65, which requires that injunctive orders be specific, such that they provide clear notice of the outlawed conduct.

II. Under the proper standard, the contempt finding in this case cannot stand. As the Ninth Circuit acknowledged, the district court's injunction did not address commissions. Instead, it specifically enjoined Apple from prohibiting the inclusion of buttons, external links, or other calls to action that developers may include in their apps. Apple complied with that demand by eliminating the anti-steering rules targeted—almost verbatim—by the injunction. Apple's new rules expressly *allowed* developers to implement buttons and other calls to action. Nothing in the injunction prohibited the conduct at issue. At a minimum, there was a fair ground of doubt as to whether the injunction—which was silent as to the conduct at issue—actually prohibited that conduct.

Because the Ninth Circuit's contempt ruling rests on a flawed legal standard, that ruling must be reversed or vacated—including as to its instructions for amending the contempt order on remand—regardless of whether this Court applies the proper contempt standard to the conduct at issue. The remand instructions depend on, and are a product of, the contempt finding and so cannot stand if this Court sets aside the Ninth Circuit's contempt decision.

ARGUMENT

I. CIVIL CONTEMPT FOR VIOLATION OF AN ORDER MAY NOT BE IMPOSED UNLESS AN ORDER PROVIDES CLEAR NOTICE THAT THE CONDUCT AT ISSUE IS PROSCRIBED

This case concerns the standard for imposing civil contempt when a party is alleged to have violated a court order. The history and nature of the civil contempt power make clear that it is uniquely susceptible to abuse and therefore must be used narrowly and cautiously. For this reason, this Court has long held that civil contempt is not appropriate unless an order leaves no "*fair ground of doubt*" that it covers the conduct giving rise to contempt. *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019) (quoting *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)). The fair ground of doubt rule focuses the contempt inquiry on an order's text and requires that parties receive clear notice that the particular conduct at issue is proscribed. The Ninth Circuit's spirit-based rule is antithetical to this Court's standard and should be rejected.

A. Longstanding Equitable Principles And This Court's Precedent Place Important Limits On The Civil Contempt Power

Since its inception at common law, the contempt power has been understood as important, but also carefully bounded. Because English judges represented the monarch, they employed contempt as necessary to "enforce obedience to writs" and thus protect the dignity of the Crown. Federal Judicial Center, *The Contempt Power of the Federal Courts*, https://www.fjc.gov/history/work-courts/contempt-power-federal-courts (last visited Sept. 8, 2026); *see* Ronald Goldfarb, *The History of the Contempt Power*, 1961 Wash. U. L.Q. 1, 7-10 (1961). Blackstone thus defined contempt as "disobeying the king's lawful commands." 4 William Blackstone, *Commentaries on the Laws of England* 121-23 (1769). And the contempt power was used to coerce compliance, for example, with "the terms" of a prior court order. F. Andrew Hessick & Michael T. Morley, *Interpreting Injunctions: A Textualist Approach*, 107 Va. L. Rev. 1059, 1075 & n.66 (2021) (quoting *Marquis of Downshire v. Lady*

Sandys (1801) 31 Eng. Rep. 962, 963-64; citing *Woodward v. Earl Lincoln* (1674) 36 Eng. Rep. 1000).

This Court has observed that "the contempt power . . . uniquely is liable to abuse." *International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994) (citation omitted). The danger arises because a single "judge [is] solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Id.* As Justice Scalia put it, allowing "one and the same person . . . to make the rule, to adjudicate its violation, and to assess its penalty is out of accord with our usual notions of fairness and separation of powers." *Id.* at 840 (concurring).

The Judiciary Act of 1789 empowered federal courts "to punish by fine or imprisonment . . . all contempts of authority in any cause or hearing before the same." But it did not define the "occasions for the exercise of [that] power." Felix Frankfurter & James M. Landis, *Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts—A Study in Separation of Powers*, 37 Harv. L. Rev. 1010, 1024 (1924). That led to abuse of the contempt power. *See* Federal Judicial Center, *The Contempt Power of the Federal Courts*, *supra*; *Bloom v. Illinois*, 391 U.S. 194, 203 (1968) (discussing abuse). In response, Congress "drastic[ally] curtail[ed]," *Bloom*, 391 U.S. at 203, the contempt power by cabining what conduct qualifies as criminally contumacious—including, as relevant here, "disobedience or resistance" to a court's "lawful writ, process, order, rule, decree, or command." *See* Act of March 2, 1831, ch. 99, 4 Stat. 487, 488 (codified as amended at 18 U.S.C. § 401).

Courts also began articulating guardrails on the exercise of the contempt power, including "in the framing of orders" that could give rise to contempt. Frankfurter & Landis, *supra*, at 1109 n.179. One "frequently quoted" statement in this vein, *id.*, expressed that because "the defendant is bound to obey the process of the court at his peril, the language of the injunction should in all cases be so clear and explicit that an unlearned man can understand its meaning," *Laurie v. Laurie*, 9 Paige Ch. 234, 235 (N.Y. Ch. 1841). "[A]t the same time," courts stated, the injunction should "be so restricted as not to deprive [the defendant] of any rights" whose loss was not required by the defendant's underlying liability. *Id.*

Other episodes further clarified contempt's limits. For example, in the fervor of the Industrial Revolution's labor movements, some judges issued "dragnet or blanket injunctions" that could result in contempt without fair notice. H.R. Rep. No. 62-612, at 26 (1912). Congress thus intervened again—this time by passing Section 19 of the Clayton Act, requiring that injunctions be "specific in terms." H.R. Rep. No. 63-627, at 5 (1914). This legislation mitigated the "dangers of abuse" from "ambiguous" injunctions. Frankfurter & Landis, *supra*, at 1052.

B. A Party May Not Be Held In Contempt Unless An Order Leaves No Fair Ground Of Doubt That It Prohibits The Particular Conduct At Issue

The standard this Court has long used to determine when civil contempt is appropriate reflects the lessons of this history. This Court has held that, because "civil contempt is a 'severe remedy,'" it may not be imposed unless the order allegedly violated provided "'explicit notice'" that leaves no "'fair ground of doubt'" that the conduct at issue is forbidden.

Taggart, 587 U.S. at 561 (emphasis omitted) (citations omitted). Or, "[i]n other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that" the alleged contemnor's conduct "might be lawful." *Id.* at 557.

The fair ground of doubt standard imposes an objective inquiry that looks to whether the enjoined party received "'explicit notice' of 'what conduct is outlawed' before being held in civil contempt." *Id.* at 561 (citation omitted); *see Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam) ("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."). Under this inquiry, civil contempt may not be imposed unless "those who must obey" a court order "will know what the court intends to require and what it means to forbid." *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967).

When it comes to "contempt proceedings," therefore, an order's "terms" govern. *Terminal R.R. Ass'n of St. Louis v. United States*, 266 U.S. 17, 29 (1924). Only "a plain violation of the decree so read" can justify contempt. *Id.* And an alleged contemnor's intent is irrelevant: "Since the purpose [of civil contempt] is remedial, it matters not with what intent the defendant did the prohibited act." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); *see Taggart*, 587 U.S. at 561. What matters is that the order giving rise to contempt afford clear notice to the parties. Needless to say, silence is not enough. *See, e.g.*, *Perez v. Danbury Hosp.*, 347 F.3d 419, 425 (2d Cir. 2003) (vacating contempt order resting on conduct as to which the court order was "silent").

Other courts have summed up this Court's caselaw as holding that contempt is inappropriate unless the particular conduct at issue can be identified "from the four corners of the order" that the alleged contemnor is said to have violated. *United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005) (citation omitted). Although a judge may be tempted to expansively interpret an injunction based on "[]reasonable assumptions" or even "a sort of common-sense judgment," "the law of civil contempt requires much more precision"—any contempt finding must be grounded in "the terms of the [o]rder" itself. *Id.* at 30; *see also Perez*, 347 F.3d at 424 (courts weighing contempt "must abide by the express terms of a consent decree and may not impose supplementary obligations on the parties even to fulfill the purposes of the decree more effectively").

In *United States v. Armour & Co.*, this Court likewise observed, in the context of interpreting a consent decree, that an order's "scope . . . must be discerned within its four corners, and not by reference to what might satisfy" unstated "purposes." 402 U.S. 673, 682 (1971). In *Armour,* the government argued that an acquisition of a meatpacker by a company with retail food subsidiaries violated the "decree's purported purpose of separating the meatpackers from the retail food business." *Id.* at 677. As the Court explained, "while structural separation of this kind may have been the Government's overall aim," the decree "prohibits particular actions and relationships not including the one here in question." *Id.* at 677-78; *see id.* at 678-79.

These "unbroken lines of authority . . . caution us to 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.). Thus, as the First Circuit has held, civil contempt is unavailable unless the order "clearly and unambiguously" proscribes "*the precise conduct on which the contempt allegation is based*." *Saccoccia*, 433 F.3d at 28. Likewise, in construing an order to assess possible contempt, any "omissions" or "ambiguities" must be resolved in favor of the alleged contemnor. *Id.* (citation omitted); *see* 11A *Wright & Miller's Federal Practice & Procedure* § 2955 (3d ed. 2026, online) (same); U.S. Br. 17, *Taggart v. Lorenzen*, 587 U.S. 554 (2019) (No. 18-489) (collecting cases). This ensures that parties receive clear notice of prohibited conduct.

A civil contempt standard based on the express terms of a court order flows from this Court's recognition that "[t]he judicial contempt power is a potent weapon," and even "a deadly one," if founded on a "vague" decree. *Longshoremen's Ass'n*, 389 U.S. at 76. Orders loosely drawn or interpreted can "put the whole conduct of the defendants' business at the peril of a summons for contempt." *Swift & Co. v. United States*, 196 U.S. 375, 396, 401 (1905) (Holmes, J.); *see B & C Truck Leasing, Inc. v. ICC*, 283 F.2d 163, 167 (10th Cir. 1960). Defendants thus "ought to be informed, as accurately as the case permits, what they are forbidden to do." *Swift*, 196 U.S. at 401.

"A basic premise of our legal system," after all, "is that a person should not be held accountable for violating the law unless she had reasonable notice of what the law required at the time of her actions." Hessick & Morley, *supra*, at 1084; *see Wooden v. United States*, 595 U.S. 360, 389 (2022) (Gorsuch, J., concurring in the judgment) ("[A]mong those 'settled usages'" of the common law "is the ancient rule that the law must afford ordinary people fair notice of its demands.”). That basic norm extends back centuries. *See, e.g.*, *Marquis*, 31 Eng. Rep. at 963 (an injunction’s terms must be stated “with precision and accuracy” such that court orders “might be clearly understood by the parties”). Simply put, defendants should “never be left to guess at what they are forbidden to do.” *Longshoremen’s Ass’n*, 389 U.S. at 75.

The fair ground of doubt standard also accords with Federal Rule of Civil Procedure 65. Rule 65 “is the successor of [section] 19 of the Clayton Act,” *id.*, and requires that every injunction “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 rule is built on the “basic principle . . . that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 444 (1974). As this Court admonished in discussing Rule 65’s requirements, “basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.” *Schmidt*, 414 U.S. at 476; *see also* U.S. Br. 14, *Hornbeck Offshore Servs., LLC v. Jewell*, 571 U.S. 1110 (2013) (No. 13-56) (“[A] rule permitting punishment for conduct purportedly violative of an injunction’s asserted ‘purpose’ but not its terms would not comport with Rule 65(d)(1) and this Court’s cases.”).

At the same time, the fact that an injunction must be specific does not mean it must be narrow. In *McComb*, this Court upheld an injunction that “[b]y its terms . . . enjoined any practices which were violations” of particular prohibitions within the Fair

Labor Standards Act. 336 U.S. at 192. Because the practice at issue in *McComb* violated the Act, the Court held it was covered by the order. But *McComb* nowhere endorsed holding a party in contempt where there is a fair ground of doubt that the party's conduct is forbidden, much less where the order does not cover the conduct at all. Nor did Justice Douglas's opinion for the majority dispute Justice Frankfurter's observation in dissent that "courts should be explicit and precise in their commands and should only then be strict in exacting compliance." 336 U.S. at 195 (joined by Jackson, J.). After all, "[t]o be both strict and indefinite is a kind of judicial tyranny." *Id.*

The "fair ground of doubt standard," *Taggart,* 587 U.S. at 562, ensures that parties receive clear notice of the conduct that is forbidden by an injunction, while leaving courts ample authority to police violations of their orders through civil contempt. As Professors Bray, Hessick, and Morley explained in their amicus brief in the Ninth Circuit, "because of its severity, contempt is limited to only clear violations of an injunction's commands." CA9 Amici Prof. Bray *et al.* Br. 9-10, ECF 80 (Bray *et al.* Amici Br.).

C. The Ninth Circuit's "Spirit" Rule Is Antithetical To The Standard And Safeguards This Court Has Long Imposed As To The Contempt Power

The Ninth Circuit's holding that "parties may be held in contempt for violating the spirit of an injunction," Pet.App.12a—and its related refusal to insist on clear notice based on the text of an order that the conduct at issue is forbidden—cannot be squared with the settled principles governing civil contempt.

First, basing contempt on a post hoc assessment of an order's "spirit" violates this Court's instruction that civil contempt should not be resorted to unless "there is *no fair ground of doubt* as to whether the order" barred the conduct at issue. *Taggart*, 587 U.S. at 557. "Spirit" is in the eye of the beholder. Basing contempt on an after-the-fact assessment of an order's unstated "spirit" contravenes the "'explicit notice'" requirement, *id.* at 561 (citation omitted), and this Court's instruction that "those who must obey" a court order must "know what the court intends to require and what it means to forbid," *Longshoremen's Ass'n*, 389 U.S. at 76. Providing clear notice requires that a court order spell out—in its text, and ex ante—the specified conduct that is required or prohibited.

Second, and relatedly, the Ninth Circuit's "spirit" rule improperly permits a contempt finding even where a court's order does not by its terms address the conduct giving rise to contempt. That purposivist approach contravenes this Court's instruction that injunctions must spell out with "specificity" the "precise bounds" of what a regulated party may and may not do. *Schmidt*, 414 U.S. at 476-77. And it cannot be squared with Rule 65's own demand, which this Court interpreted in *Schmidt*—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).

Here, the injunction specifically forbade Apple from prohibiting developers from including buttons, external links, or calls to action in their apps. Apple complied with that command by removing its anti-steering guidelines and allowing the inclusion of such elements. But as all agree, the injunction said nothing about commissions. "[B]asic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt,* 414 U.S. at 476. Yet Apple was held in contempt based on an after-the-fact declaration that—even though the injunction did not mention commissions—its "spirit" outlawed them. For a business, much less an individual, facing possible jeopardy for contempt, that regime is wholly unworkable and unfair.

The Ninth Circuit's spirit rule also corrupts the proper textual analysis. Here, for example, the Ninth Circuit referred to one word in the district court's injunction—"prohibit." Pet.App.19a. But the court's approach was far removed from a textual analysis demanding that the injunction clearly and specifically proscribe the conduct at issue. Of course, as is always true, text should be read in context. But the Ninth Circuit invoked the "spirit" of the injunction to transform a specific prohibition on barring developers from using buttons, external links, or calls to action into a generalized ban on any conduct that had a "prohibitive effect" on downstream link-out *purchases*. Pet.App.20a, 34a n.9. The Ninth Circuit's passing reference to "prohibit" thus cannot mask the "spirit" analysis at the heart of its decision.

Third, the Ninth Circuit's "spirit" analysis supercharges the risk of abuse. Contempt is a "potent weapon" that can become a "deadly" one when founded upon a "vague" decree. *Longshoremen's Ass'n*, 389 U.S. at 76. Untethering contempt from the text of a court's order—and allowing judges to assess contempt based on their ex post divination of an order's "spirit"—exacerbates the concerns with concentrating power in one person. *See Bagwell,* 512 U.S. at 831; *id.* at 840 (Scalia, J., concurring). Because contempt "uniquely is 'liable to abuse,'" *id.* at

831 (citation omitted), it must be cabined to those situations in which an order's text, and not its ill-defined spirit, explicitly proscribes the conduct at issue. *See Armour*, 402 U.S. at 682-83 (looking to the "four corners" of an order and not its unstated "purposes"). "[T]hwart[ing] the [supposed] goals of the injunction is not the same as violating the terms of the injunction." Bray *et al.* Amici Br. 11.

As Professors Bray, Hessick, and Morley explained in their amicus brief below, "[e]quity's concern with circumvention is not a reason to skip over the essential requirement that contempt be imposed only when an injunction actually prohibits what the defendant did." *Id.* at 12. If there are new or unforeseen circumstances, district courts can modify or clarify injunctions. But the "power to modify is distinct from the power to impose contempt." *Id.* at 14; *see infra* at 30-31. And the power of contempt is the power of "judicial punishment," *Schmidt,* 414 U.S. at 476, which demands that parties be given clear notice.

This Court should reject the Ninth Circuit's outlier "spirit" rule and hold, as it did in *Taggart*, that a party may not be held in civil contempt unless a court order provides explicit notice that it covers the conduct at issue, such that there is no fair ground of doubt that the conduct is proscribed by the order.

D. Courts May Address New Or Unforeseen Circumstances By Modifying Orders On A Prospective Basis After Notice And An Opportunity To Be Heard

The fact that civil contempt does not reach conduct that falls beyond an injunction's clear terms does not mean that courts are powerless to address new or unforeseen circumstances. If an existing injunction proves inadequate, a court may modify or clarify it on a going-forward basis—so long as the affected parties have notice and an opportunity to be heard and any modification is carefully tailored to the adjudicated violation that originally supported relief.

"[F]lexibility [is] inherent in equitable remedies." *Brown v. Plata*, 563 U.S. 493, 538 (2011) (citation omitted). Courts thus have "broad" power to modify injunctions. *Id.* at 542 (citation omitted). And, unlike a civil contempt finding, modifying an injunction avoids stamping a party with the "stigma" that a contempt label can carry. *Reich v. Sea Sprite Boat Co.*, 64 F.3d 332, 334 (7th Cir. 1995) (Easterbrook, J.). But the modification power is subject to important constraints. Ordinarily, modification should follow a robust process that provides ample notice and opportunity to be heard. *See, e.g.*, *Armour*, 402 U.S. at 681; *Doe 1-13 ex rel. Doe Sr. 1-13 v. Bush*, 261 F.3d 1037, 1063-64 (11th Cir. 2001), *cert. denied*, 534 U.S. 1104 (2002); *Dr. José S. Belaval, Inc. v. Peréz-Perdomo*, 465 F.3d 33, 37 (1st Cir. 2006); *Armstrong v. Brown*, 768 F.3d 975, 979-80 (9th Cir. 2014).

Moreover, modification is not a license to prohibit any conduct deemed undesirable; it must be tailored to "prevent[ing] the evils aimed at by the original complaint." *Armour*, 402 U.S. at 681; *see United States v. United Shoe Mach. Corp.,* 391 U.S. 244, 251-52 (1968). Likewise, modification cannot be used to expand the remedy allowed by the adjudicated violation. *See, e.g.*, *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."). A court may not use modification to circumvent the process required to adjudicate separate violations of law.

In short, while courts may modify injunctions to address new circumstances on a going-forward basis, civil contempt is not a substitute for modification.

II. UNDER A PROPER ANALYSIS, THERE IS NO BASIS FOR HOLDING APPLE IN CONTEMPT BASED ON THE INJUNCTION

Under the proper, fair ground of doubt standard, the Ninth Circuit's decision upholding the district court's contempt finding based on Apple's link-out commission and design rules, along with its related remand instructions, cannot stand.

A. The Ninth Circuit Erred In Upholding The Contempt Finding Based On Apple's Commission On Link-Out Purchases

1. At just 75 words, the district court's original injunction addressed a specific and narrow set of conduct relating to Apple's developer guidelines. Part (i) of the injunction—the only part at issue—explicitly barred Apple from "prohibiting" developers from "including" in their apps "buttons, external links, or other calls to action" directing users to other purchasing mechanisms. Pet.App.166a.

"Often enough in ordinary speech," this Court has explained, "to *prohibit* something means to 'forbid,' 'prevent,' or 'effectively stop' it, or 'make [it] impossible.'" *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 697 (2022) (alteration in original) (citation omitted); *see Prohibit*, *Merriam-Webster Dictionary* 574-75 (3d ed. 2016) (defining "prohibit" to mean "to forbid by authority" or "to prevent from doing something"); *Prohibit*, *Collins English Dictionary &*

Thesaurus 691 (5th ed. 2015) (defining "prohibit" to mean "forbid or prevent from happening"); *Prohibit*, *Black's Law Dictionary* (11th ed. 2019, online) (defining "prohibit" to mean "[t]o forbid by law" or "[t]o prevent, preclude, or severely hinder").

Apple did not "prohibit" developers from including in their apps buttons, external links, or other calls to action. Just the opposite: Before the district court's injunction, Section 3.1.1 of Apple's guidelines provided that developers "may not include buttons, external links, or other calls to action"—that is, Apple's guidelines prohibited developers from including such design elements. JA29-30. In response to the injunction—which mirrored almost verbatim Section 3.1.1—Apple deleted the enjoined provision and replaced it with a new guideline expressly allowing developers to include those design elements in linking out to alternative purchasing mechanisms. JA506-07. Apple thus complied with the injunction's explicit command.

That should have been the end of the inquiry. 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 injunction here described a specific command against prohibiting developers from including buttons, external links, or other calls to action in their apps. And Apple revised its guidelines to allow developers to do just that.

Apple's commission on link-out purchases does not change things. The injunction's text did not mention commissions. Nor did the text refer to Apple's responsibility for any downstream transactions accomplished *after* a user clicks on a button, external link, or other call to action to leave an app. As the Ninth Circuit itself recognized, "the text of the Injunction does not address commissions at all." Pet.App.34a n.9. Likewise, Epic conceded in its motion to enforce the injunction that the district court "did not explicitly prohibit" Apple from "introducing a new fee on purchases made outside [an] app." JA549. Because the injunction indisputably did not address link-out commissions, Apple's commission did not violate the injunction. That alone is reason enough to reverse or vacate the judgment below.

A proper textual analysis ends there. But this result accords with the source of the underlying UCL violation. According to the district court, Apple's anti-steering rules inflicted an "informational harm" that violated the UCL by preventing developers from communicating with users about other purchasing options. Pet.App.34a n.9. To remedy that violation, the district court fashioned what it called a "limited measure" designed to encourage "the open flow of information" between developers and users. JA380, 376. The injunction explicitly targeted Apple's anti-steering guidelines. *See supra* at 9-10. By eliminating those rules and allowing developers to include buttons, external links, or other calls to action, Apple remedied the informational harm.

The district court also recognized that Apple is entitled to compensation when developers sell digital goods and services, even when purchases take place outside an app. Whether a user purchases a *Fortnite* "skin" or "emote" within the app or through a link-out purchase to Epic's own purchasing mechanism, that user benefits all the same from the value of Apple's substantial investments in the iOS platform, developer tools, and the App Store. That user plays

Fortnite on a device Apple invented, running an operating system Apple created and maintains, having downloaded the game from a marketplace Apple pioneered. And Epic, for its part, offered *Fortnite* to that user thanks to the tools and technologies Apple has made available for app creation and distribution. The district court itself acknowledged that "Apple is entitled to *some* compensation for use of its intellectual property." JA348. And the court recognized that a commission was appropriate, "[e]ven in the absence of IAP." JA347 ("Even in the absence of IAP, Apple could still charge a commission on developers.").

At the same time, Apple's commission on link-out purchases in no way prevented developers from including in their apps "buttons, external links, or other calls to action," much less "forb[ade]" or rendered "impossible" the inclusion of such elements. *Ysleta del Sur Pueblo*, 596 U.S. at 697 (citation omitted). Apple's commission was based solely on downstream purchases; it did not impose any fee on the inclusion of buttons, external links, or other calls to action. There is no reasonable construction of the order's text that supports holding Apple in contempt based on the link-out commission. Undoubtedly, that explains why the Ninth Circuit leaned so heavily on the injunction's purported "spirit."

2.a. The Ninth Circuit's contrary analysis was flawed. The court acknowledged that "the Injunction does not address commissions at all." Pet.App.34a n.9. Instead, the Ninth Circuit reasoned that "the *spirit* of the Injunction contemplates" that "prohibitive commissions" are barred. *Id.* (emphasis altered). That analysis turns this Court's fair ground of doubt standard on its head and illustrates all the problems with a spirit-based inquiry.

The contempt finding as to the commission is a product of the Ninth Circuit's erroneous "spirit" rule. Invoking *Sea Shepherd*, the district court reasoned that it was free to look "outside the four corners of the injunction" to hold Apple in contempt based on the "spirit" of the injunction. Pet.App.131a-32a; *see* Pet.App.130a (citing the Ninth Circuit's "spirit" standard). At the same time, while the district court simply declared that "Apple violated the literal text," Pet.App.131a, its decision lacks any detailed textual analysis explaining how the injunction proscribed Apple's link-out commission. The fact is, as both the Ninth Circuit and Epic acknowledged, the injunction said nothing whatsoever about commissions.

The district court stated that it was "ludicrous to expect any court to repeat the contents of a 180-page order" in the text of a "one-paragraph injunction." Pet.App.131a-32a. But Rule 65 expressly requires courts to state an injunction's "terms specifically" and "in reasonable detail—and *not* by referring to the complaint or other document." Fed. R. Civ. P. 65(d)(1)(B)-(C). This Court's cases likewise train the inquiry on the text of the order. *See supra* at 21-26. In any event, here, the district court's opinion itself acknowledged that Apple could charge a commission on non-IAP purchases. *See supra* at 34. The opinion nowhere stated that Apple was barred from charging a link-out commission. The district court divined that rule from the injunction's spirit.

After holding Apple in contempt for charging its 12-27% commission, the district court declared that Apple could not charge *any* commission—an extraordinary penalty that Apple could never purge.

See Pet.App.159a. *But see Bagwell*, 512 U.S. at 829 (holding contempt sanction "is civil only if the contemnor is afforded an opportunity to purge"). Although the Ninth Circuit reversed the district court's permanent prohibition on any link-out commission, it attempted to regulate Apple's business anyway—on the basis of the same contempt finding—by setting forth draconian parameters on the commission Apple might charge under an amended contempt order, which, again, appear to be permanent in nature. Pet.App.35a-36a (recommending "some possible courses of action" in amending the contempt order on remand, including that Apple be limited to a narrow set of its "necessary costs" for coordinating link-out purchases).

In effect, the Ninth Circuit's sua sponte, "necessary costs" regulation attempts to harness the civil contempt power to take the reins of the app economy, putting the federal courts in the role of rate-inspector based on an injunction that all agree never even addressed commissions in the first place.

b. After invoking *Sea Shepherd* in its motion to enforce and defending the district court's spirit-based approach in the Ninth Circuit, Epic now argues that the Ninth Circuit actually engaged in a textual analysis because it pointed to the injunction's use of the word "prohibit[]." Pet.App.19a; *see* BIO17, 19. That argument fails. The Ninth Circuit made clear that it relied on the injunction's spirit to affirm the district court's contempt finding as to Apple's commission rate: the Ninth Circuit reasoned that "the spirit of the Injunction" covers "*prohibitive* commissions" even though the injunction's text does not address them, and the court began its contempt analysis with a lengthy discussion of "**The**

Injunction's Spirit." Pet.App.11a-12a (heading); *see* Pet.App.34a n.9. As the Ninth Circuit concluded, it did not matter that "the Injunction says nothing about commissions." Pet.App.20a-22a. "Spirit" drove the Ninth Circuit's analysis from start to finish.

The Ninth Circuit's reference to the word "prohibit" does not convert its spirit analysis into a textual one. Pet.App.19a. The court leapt from the injunction's use of "prohibit" to a conclusion that the injunction enjoined anything with a "prohibitive effect." Pet.App.19a-20a. But like words in a statute, "prohibit" must be understood in context. And here, the injunction barred Apple from "prohibit[ing] certain behavior," *Armour*, 402 U.S. at 678, that it specifically defined: *the inclusion of buttons, external links, or other calls to action*, Pet.App.166a. An injunction that specifically prohibits a party from doing X, Y, or Z, is not reasonably read as prohibiting something entirely different—here, charging a commission on a transaction completed *after* a user has followed a link to an alternative site.

c. The Ninth Circuit also reasoned that the injunction's spirit barred prohibitive commissions because Apple's commission would eliminate any economic incentive for developers to "opt into Apple's Link Entitlement program," thereby "effectively stripping consumers of access to information about other purchasing programs." Pet.App.34a n.9. That, too, was error. Apple's commission did not prohibit—or, indeed, impose any burden on—the inclusion of buttons, external links, or other calls to action that direct customers to purchasing mechanisms beyond IAP. The efficacy of such purchasing mechanisms is a separate issue, and the relative costs and benefits of actually establishing external purchasing mechanisms are beyond the injunction's scope.

More fundamentally, relying on possible downstream or secondary effects substitutes speculation for the "explicit notice" required before imposing contempt. *See Taggart*, 587 U.S. at 557, 561 (citation omitted). Apple's decision to charge a link-out commission was—at a minimum—conduct separate and apart from the *design rules* that the injunction explicitly enjoined. As even the district court explained, while Apple supposedly implemented a link-out commission with the "goal" of "maintain[ing] its anticompetitive revenue stream," that conduct was distinct from the conduct "the Court had prohibited Apple" from engaging in through its original injunction. Pet.App.51a-52a.

3. At a minimum, there was a "fair ground of doubt" whether the injunction forbade Apple from charging its commission on link-out purchases, precluding any contempt finding. *Taggart*, 587 U.S. at 557 (emphasis omitted). All agree that the injunction said nothing about commissions. Pet.App.34a n.9. That silence supports the conclusion that the injunction unambiguously did not cover commissions. But at the least, the silence created a fair ground of doubt as to whether the injunction covered commissions. That is particularly so because the injunction coupled its silence as to commissions with text specifically targeting separate conduct.

Nor was it free from doubt whether the injunction barred Apple from engaging in conduct that might have a "prohibitive effect" on downstream link-out *purchases*, as opposed to developers' ability to implement the specific design elements that Apple had previously prohibited and that the district court identified to bolster consumer information. The injunction did not say anything about developers' incentives, nor did it require Apple to ensure that link-out purchases would be offered by developers. This doubt is magnified by the nature of the violation underlying the injunction. As explained, the UCL violation found by the district court was based on the *informational* harm stemming from Apple's steering provisions. *See supra* at 33.

California courts also have rejected reliance on the UCL to restrict prices or engage in rate setting. As one court put it, "[t]he UCL 'is not, and never was intended to be, a mechanism for challenging the price of goods and services as simply "too high."'" *McKell v. Washington Mut., Inc.*, 49 Cal. Rptr. 3d 227, 241 (Ct. App. 2006); *see also Willard v. AT&T Commc'ns of Cal., Inc.*, 138 Cal. Rptr. 3d 636, 641 (Ct. App. 2012); *California Grocers Ass'n v. Bank of Am.*, 27 Cal. Rptr. 2d 396, 404 (Ct. App. 1994). That made it all the more dubious that the UCL violation here could be turned into a means of regulating link-out rates.

Even if the injunction could be interpreted to bar Apple from doing anything that had a prohibitive effect on developers implementing link-out purchases, it also was not free from doubt that Apple's decision to charge a 12-27% commission would have such an effect. Apple's 12-27% commission was less than the IAP commission, accounting for the fact that Apple did not process payments. In addition, Apple imposed its link-out commission for only those purchases made within seven days of a user clicking an external link. *See* Tr. 132:7-21 (Fischer), Dkt. 976. Apple forecasted that the seven-day limitation would render the "effective" commission rate "around 18 percent." *Id.* at 132:18-19. As a result, for large developers (like Epic), their effective commission rate would fall below 27 percent, thereby incentivizing developers to lure users away from Apple's in-app purchasing system. *See* Tr. 623:13-15 (Oliver), Dkt. 979 (expressing Apple's "confidence that developers would have an opportunity to capture [a] significant amount of value from the out-of-app transactions occurring after the seven-day window").

And even if a developer's marginal costs of facilitating link-out purchases were greater than the differential between the IAP and link-out commission rate, *see* Pet.App.20a, Epic's own submissions confirmed that developers have other incentives to implement link-out purchases besides rate alone. Developers might want to "handle transactions, subscription management, tax compliance, and pricing localization," and may want to add on "cross-platform support, direct customer support, and refund processing, among other[]" services. Dkt. 897-2 at 6. Developers, in other words, want to "be in the driver's seat of their own customer relationships." *Id.* And, under Apple's new guidelines, any developer that wanted to offer a lower price on its website and advertise that price to users, within an authorized app or otherwise, could do so. Dkt. 915 at 14-15. The developer even could encourage users to purchase goods outside the seven-day window.

In short, nowhere did Apple receive "explicit notice" that its commission structure would violate the district court's injunction. *Taggart*, 587 U.S. at 561 (citation omitted). Indeed, by remanding to the district court to amend the contempt order *to address commissions*, the Ninth Circuit conceded that the injunction did not cover, much less unambiguously prohibit, commissions in the first instance. The Ninth

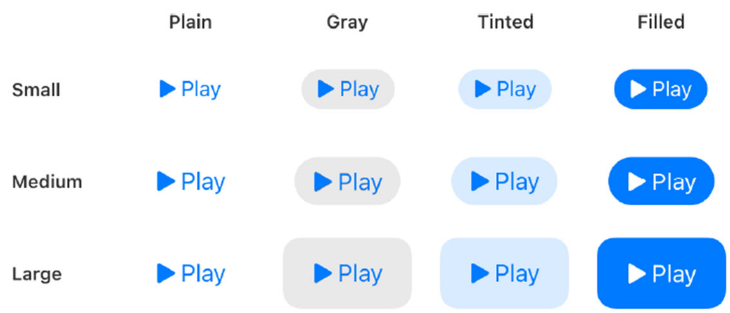
Circuit's decision that Apple was properly held in civil contempt for charging a commission cannot stand.

B. The Ninth Circuit Erred In Upholding The Contempt Finding Based On Apple's Design Regulations

The Ninth Circuit also erred in concluding that Apple could be held in civil contempt for implementing certain design rules. As to Apple's guidelines governing the inclusion of buttons and calls to action (the focus of the court's analysis concerning the design rules), the Ninth Circuit held that they violated the injunction's text. Pet.App.22a-23a. But that conclusion cannot stand under the proper, fair ground of doubt standard. And as to the other design rules Epic challenged, the Ninth Circuit relied solely on the injunction's "spirit" without even attempting to ground contempt in a violation of the injunction's terms. Pet.App.23a-25a.

1. As to buttons, the injunction barred Apple from "prohibiting" developers from "including . . . buttons" for link-outs. Pet.App.166a. In response, Apple eliminated its anti-steering guideline barring the use of buttons and promulgated a new guideline allowing developers to use Apple's plain button style for directing users to external purchasing methods. Dkt. 874, Ex. 3. That rule complied with the injunction. As discussed, prohibiting something is different than regulating it. And nothing in the injunction required Apple to allow *any* kind of button, or *all* buttons.

That textual analysis should control. But the background context also supports Apple's rule. Apple's preexisting Human Interface Guidelines historically provided for various button styles:



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The plain button style shown above is most consistent with other links users could activate to go outside Apple's ecosystem, and Apple wanted it "to be clear that this is a web link and not an in-app purchase." Tr. 840:19-20 (Schiller), Dkt. 980; *see id.* at 840:23-24 (goal was "to create a consistent user experience"); *id.* at 841:19-24 ("plain" button "more closely matches the style of hyperlinks and other internet links that we're used to seeing"). As the district court recognized, "Apple required the plain-link-button style button so that the external link would look like hyperlinks or other internet links that consumers are used to seeing." Pet.App.98a. And, the district court had told Apple, it was not "here to micromanage" and could "envision numerous avenues for Apple to comply with the injunction and yet take steps to protect users." Dkt. 830 at 3.

The Ninth Circuit observed that a "'plain button' is no button at all." Pet.App.23a. But that reading is untenable. In the software industry, a "button" is defined as "[a]n area on a screen that when activated . . . causes an action to be initiated," and which "can be any shape or size and need not be visible." *Button*, *Oxford Dictionary of Computer Science* (7th ed. 2016); *see Button*, *American Heritage*

Dictionary of the English Language (5th ed. 2022) ("[A] well-defined area within the interface that is clicked to select a command."). Apple's plain button readily meets those definitions: When a user presses the button—an "area on a screen"—it "activate[s]" a link, causing an "action to be initiated," that is, opening a disclosure screen linked to a developer's external purchasing mechanism. *See also* Tr. 1881:14-1882:5 (Schiller), Dkt. 1309 (explaining the button "can be clicked on and it will take an action").

The Ninth Circuit objected that the plain button is not "enclosed in a shape that uses a contrasting background fill." Pet.App.23a (citation omitted). But the injunction said nothing about contrasting background fills, visual prominence, or anything more specific than that Apple had to permit "buttons." Pet.App.166a. And, even assuming the district court could have prescribed rules governing the kinds of "buttons" developers must be permitted to use in their apps, the district court was required to spell out those requirements—such that Apple had "explicit notice"—before holding Apple in contempt for failing to abide by them. *Taggart*, 587 U.S. at 561 (citation omitted). Nothing about the injunction's requirement that Apple allow "buttons" provided clear notice that Apple's plain button requirement was unlawful.

2. The Ninth Circuit also erred in concluding that Apple violated the injunction's requirement that it allow developers to use "other calls to action." Pet.App.166a. Once again, Apple eliminated its rule forbidding "calls to action" and issued a new rule allowing them. Specifically, Apple's new guideline allowed developers to select one of five different templates, each of which directed users to other purchasing mechanisms. *See* Dkt. 874, Ex. 3.

Developers could tell users: (1) "[p]urchase from the website at www.example.com," (2) "[f]or special offers, go to www.example.com," (3) "[l]ower prices offered on www.example.com," (4) "[t]o get XX% off, go to www.example.com," or (5) "[b]uy for $X.XX at www.example.com." *Id.* These calls to action accomplished the injunction's aim of disseminating information to users about alternative methods to purchase digital goods and services. *See supra* at 33. And they complied with the injunction's requirement that Apple not "prohibit[]" developers from "including . . . calls to action." Pet.App.166a.

The Ninth Circuit reasoned that "[b]y limiting developers to particular, limited templates, Apple violated the Injunction." Pet.App.23a. The district court likewise explained that "Apple chose the most anticompetitive option" by limiting developers to particular options. Pet.App.111a. As with Apple's button style guidelines, however, nothing in the injunction required Apple to allow developers to use *any* kind of call to action, without any guidance whatsoever. Indeed, it would be absurd to say that the injunction required Apple to allow *any* call to action, even one, for example, using offensive or profane language. *See* Pet.App.27a-28a (recognizing that Apple could employ design guidelines to prevent developers from "tramp[ling] Apple's payment option"). The injunction straightforwardly required Apple to allow developers to use "calls to action," and Apple allowed just that by offering developers multiple options to inform users about discounted alternative purchasing mechanisms.

As to both "buttons" and "calls to action," the district court flipped the proper standard. The court stated that Apple "limits" the kinds of buttons and calls to action available to developers, and it reasoned that "[n]owhere does the Court authorize those limitations." Pet.App.140a. That answers the wrong question by assuming—incorrectly—that the injunction banned any kind of design restriction unless specifically "authoriz[ed]." *Id.* Even then, the court stopped short of concluding that Apple's design rules "alone violate the Injunction." *Id.* Instead, the court reasoned that Apple could be held in contempt because Apple "violated the central mandate of this Court's orders: that Apple not foreclose competitive alternatives to IAP." *Id.* In other words, the district court again resorted to a spirit analysis.

3. The Ninth Circuit likewise erred in upholding the district court's contempt finding as to the three remaining design rules—concerning where link-outs may appear, what apps must communicate to users completing transactions outside Apple's platform, and what kinds of URLs developers may use. The text of the injunction did not address such guidelines; it targeted "buttons, external links, or other calls to action." Pet.App.166a. The Ninth Circuit did not suggest otherwise; indeed, it "assume[d] *arguendo* that Apple did not violate the strict letter of the Injunction." Pet.App.22a. Instead, the Ninth Circuit premised contempt as to those three design guidelines on a violation of the injunction's spirit. *See* Pet.App.22a-25a. But as explained, an injunction's supposed "spirit" cannot support a contempt finding.

Fundamentally, the problem is that the district court proceeded as if the injunction established a detailed set of design rules. But it did no such thing; the order simply targeted Apple's anti-steering provisions (which Apple then eliminated). At the same time, the district court observed that it was not "here to micromanage" the App Store. Dkt. 830 at 3. Yet the court held Apple in contempt for not following design requirements found nowhere in the injunction. The Ninth Circuit improperly invoked its spirit rule to sustain that contempt finding.

But, as discussed, when it comes to contempt, the question is what the injunction—by its terms—so clearly prohibited as to leave no room for objective, reasonable disagreement. *See Taggart*, 587 U.S. at 557. Here, the injunction did not prohibit any of Apple's design rules. At a minimum, there was a fair ground of doubt as to whether the injunction proscribed the design guidelines Apple implemented. Typically, these sorts of issues are hashed out or clarified on a prospective basis without the heavy hammer of contempt. But here, the district court, on Epic's motion, launched a contempt proceeding, found Apple in contempt under an erroneous legal standard, and then purported to impose the rules *absent* in its original injunction in a new contempt order. But Apple, like any party, was entitled to clear notice of what was prohibited *before* any contempt finding.

4. Finally, as to the design rules and Apple's commission, the district court relied heavily on its belief that Apple willfully violated the injunction. Pet.App.52a-53a, 134a-35a. That, too, was error. As this Court has held, contempt turns on an "*objective*" inquiry centered on an order's terms. *Taggart*, 587 U.S. at 561; *see McComb*, 336 U.S. at 191 ("Since the purpose [of civil contempt] is remedial, it matters not with what intent the defendant did the prohibited act."). Apple strongly, and respectfully, disagrees with the district court's findings. Apple devoted enormous resources to complying with the injunction, while also attempting to run a successful business

and honor its fiduciary duties to its shareholders. In any event, the bottom line is that the district court's findings as to Apple's subjective intent cannot support the Ninth Circuit's legally flawed contempt ruling.

C. At A Minimum, The Ninth Circuit's Contempt Ruling And Related Remand Instructions Must Be Vacated

For the foregoing reasons, this Court should reverse or vacate the Ninth Circuit's decision and hold that, under the proper standard, Apple cannot be lawfully held in contempt for implementing either its commission or its design rules concerning link-outs. It requires no extensive analysis to conclude that the conduct at issue did not offend any clear directive in the district court's 75-word injunction, and this Court's application of the proper standard for assessing contempt to the circumstances here would provide helpful guidance to lower courts. In any event, regardless of whether the Court applies the correct standard, if the Court reverses or vacates the Ninth Circuit's civil contempt ruling, the Ninth Circuit's related remand instructions cannot stand.

If the district court's contempt finding as to the commission cannot stand, then the Ninth Circuit's order remanding the case for the district court to amend its contempt order (i.e., the "April 30 order") to address the commission likewise cannot stand. Pet.App.34a-35a. That includes the Ninth Circuit's statement concerning "some possible courses of action to the district court regarding an appropriate commission or fee limitation on remand." Pet.App.35a. Without briefing or argument on the issue, the Ninth Circuit sua sponte announced that "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." *Id.* And, without explanation or briefing, the court went on to define Apple's "necessary costs" as excluding costs related to security or privacy, and to likewise exclude costs that are also necessary for IAP. *Id.* That portion of the opinion has no basis, however, if the Ninth Circuit's ruling upholding the contempt finding is set aside.

This conclusion follows naturally from the fact that there can be no remand to amend the contempt order as to the commission (Pet.App.34a-35a) if there was no basis to hold Apple in contempt for charging its commission. Here, the Ninth Circuit remanded for the district court to amend its contempt order, by converting it into either a "purgeable civil contempt sanction" or a "properly tailored modification of the Injunction." *Id.* But amending a contempt order to modify an injunction is a legal amalgamation that makes no sense. Contempt and modification are distinct remedies, requiring distinct inquiries. Any modification under the Ninth Circuit's decision would be improperly tainted by its erroneous contempt finding and attendant instructions, as underscored by the fact that it would amend the *contempt order*.

Moreover, the only way to understand the Ninth Circuit's draconian "necessary costs" limitation is as an outgrowth of its contempt finding. Permanently limiting Apple's commission on link-out purchases to a narrow subset of Apple's costs has nothing to do with remedying the "informational harm" underlying the sole UCL violation. Pet.App.34a n.9; *see supra* at 33. Likewise, California courts have rejected use of the UCL for rate regulation. *See supra* at 39. The only possible explanation for the "necessary costs" language was as a penalty for the contempt finding as to the commission. And the Ninth Circuit's decision makes that express, because its remand instructions are explicitly tied to "resolv[ing] [the district court's] error" in barring Apple from charging any commission as a contempt sanction. Pet.App.33a-34a.

Accordingly, regardless of whether the Court applies the proper standard to the conduct at issue, if this Court agrees that the district court's contempt finding as to Apple's link-out commission cannot stand, it should vacate the Ninth Circuit's contempt ruling in its entirety. That includes the court's instructions for amending the flawed contempt order "regarding an appropriate commission or fee limitation on remand." Pet.App.35a.

CONCLUSION

The Ninth Circuit's decision should be reversed.

Respectfully submitted,

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