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 OF *AMICI CURIAE* FORMER ARTICLE III JUDGES IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are fourteen former Article III judges with decades of experience sitting on trial and appellate courts. They have a significant interest in ensuring that judges can effectuate injunctions through civil contempt. *Amici* have had considerable involvement in issuing, enforcing, and reviewing injunctions, and they recognize that, in cases like this one, the contempt power is necessary to prevent enjoined parties from evading injunctive orders' substantive commands. The courts here properly held Apple in contempt because there is "no fair ground of doubt" that Apple's evasive conduct violated the injunction, *Taggart v. Lorenzen*, 587 U.S. 554, 557 (2019), when the injunction is read, as it should be, in the litigation context in which it was issued. As *amici* explain below, a contrary holding from this Court would erode courts' inherent authority to enforce their injunctions and to deter the very conduct that was enjoined. *Amici* and the courts on which they served are listed in the Appendix.

SUMMARY OF ARGUMENT

The district court properly held Apple in contempt for violating its injunction, and this Court should respect its careful work and affirm. Doing so would discourage enjoined parties from subverting injunctions through narrow literalism and deter further evasion.

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[1] No counsel for a party authored this brief in any part, and no one other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of the brief.

The law of injunctions balances Rule 65's demand for specificity with the need to effectively constrain enjoined parties' conduct. Injunctions must be specific enough to provide fair notice of what an enjoined party can and cannot do. But the specificity requirement does not require courts to spell out all the ways an enjoined party could violate an injunction. Indeed, excessive specificity can encourage evasion by allowing the enjoined party to adopt new conduct designed to achieve the same effect as the conduct prohibited by the order's literal terms. Interpreting an injunction in the context of the litigation from which it arose clarifies whether the enjoined party has violated it and, if so, whether contempt is warranted.

Contempt gives courts the authority necessary to enforce injunctions. This inherent power serves three essential functions: disincentivizing the enjoined party's disobedience, protecting the party seeking the injunction's enforcement, and preserving the court's dignity. Without the ability to hold a party in contempt, those functions could not be achieved, and courts could not effectively prevent enjoined parties from evading injunctions.

Courts rely on the contempt power to police evasive behavior in situations analogous to this case. Part II of this brief reviews a dozen decisions from across the judiciary in which enjoined parties complied with the literal text of injunctions but also plainly evaded their commands in ways that warranted contempt. These cases provide a sampling of the careful work that the lower courts undertake to enforce injunctions. In cases like these, where enjoined parties seek to circumvent an injunction through reliance on its literal text, courts must have the power of contempt to deter and

remedy evasion. Otherwise, courts would be forced into a game of whack-a-mole, trying to anticipate every possible means of evading an injunction and then, when that fails, giving the enjoined party free bites at the apple as it devises more creative ways to skirt the injunction. Apple's conduct—employing new tactics to achieve the very result that was enjoined—is no different from the conduct in the cases we describe in Part II.

With that in mind, this Court should adopt a minimalist approach to resolving this case. The district court exercised restraint in its contempt finding, issuing no sanction apart from enjoining Apple's new, evasive conduct. And the parties agree on the governing "fair ground of doubt" *Taggart* standard, so the only question before this Court is how to apply that standard to the facts of this case, a process that the lower courts are better suited to handle and, indeed, have already conducted appropriately here.

This Court should therefore affirm. But if it chooses instead to clarify the legal standard, after doing so, it should simply vacate and remand to allow the lower courts to reconsider the contempt finding.

ARGUMENT

Imagine you are attending a group work meeting, and you pull out your phone to check your email. Your boss sees you checking your email and says: "This is an important meeting. No phones may be used." You respond by putting your phone away and furtively pulling out your tablet to continue checking emails. Any reasonable person would agree that continuing to check emails on the tablet does not comply with the boss's command. Though by putting away the phone

you have literally complied with your boss's directive, common sense dictates that the boss does not want employees distracted during the meeting.[2]

This simple example helps illustrate the issue before this Court. The district court enjoined Apple's anti-steering rules. Apple responded by formally allowing steering, but it imposed a combination of restrictions, including a prohibitively high commission. These changes prevented any single developer from implementing steering. *See* Resp. Br. 38. Apple's actions violated the injunction in the same way that pulling out a tablet contravened the boss's "no phones" command. Accepting Apple's argument that injunctions must specifically prohibit the myriad ways they could be violated would invite parties to experiment with evasive tactics. That danger, in turn, underscores the importance of civil contempt to deter others from following suit.

In the pages that follow, Part I discusses background principles concerning the law of injunctions and civil contempt. Part II describes caselaw exemplifying the evasive behavior enjoined parties engage in, which would be encouraged if this Court rules in Apple's favor. Finally, Part III explains why this Court should take a minimalist approach to resolving this case.

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[2] *See* Sophie Bridgers et al., *Loopholes: A Window into Value Alignment and the Communication of Meaning*, Cognition, Aug. 2025, at 1 (linking to a dataset containing a similar scenario).

I. The law of injunctions and contempt

Section A below explains the requirements for issuing and interpreting injunctions. Section B examines the courts' inherent power to enforce injunctions through civil contempt. It describes the key functions of contempt and why contempt is a critical tool in deterring enjoined parties from evading injunctions.

A. Injunctions

1. An injunction is an equitable civil remedy that compels or restricts a party's actions. *Int'l Longshoremen's Ass'n, Loc. 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 75-76 (1967). It prevents parties from suffering irreparable harm that cannot be redressed through a damages award. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982); *see* James L. High, *A Treatise on the Law of Injunctions* 36 (4th ed. 1905).

Federal Rule of Civil Procedure 65(d) requires an injunction to "state the reasons why it was issued," "state its terms specifically," and "describe in reasonable detail … the act or acts restrained or required." These requirements ensure that enjoined parties receive adequate notice of what conduct is restricted or compelled. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70*, 415 U.S. 423, 444 (1974). Notice is inadequate, and an injunction unacceptably vague, when an ordinary person cannot ascertain from the injunction what conduct is proscribed. 11A *Wright & Miller's Federal Practice & Procedure* § 2955 (3d ed. 2026); *U.S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 n.19 (5th Cir. 1975).

But Rule 65's demand for specificity does not require the court "to identify every conceivable act" covered by the injunction. *Medtronic, Inc. v. Benda*, 689 F.2d 645, 649 (7th Cir. 1982). Indeed, courts appreciate that excessive specificity can undermine an injunction's effectiveness. "[T]he possibility of technical infractions" by enjoined parties increases with "the detail, precision, and specificity of an order." 11A *Wright & Miller's Federal Practice & Procedure* § 2955 (3d ed. 2026). Hyper-specific injunctions provide "more opportunities for evasion" by giving enjoined parties a precise list of what is prohibited, furnishing a roadmap for circumvention. *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1431 (7th Cir. 1985). Courts can properly issue injunctions that prohibit the specific unlawful conduct that has already occurred while also using broad language to proscribe a range of activity that might achieve the same prohibited result, reducing opportunities for evasion. *See McComb v. Jack. Paper Co.*, 336 U.S. 187, 192-93 (1949).

2. An injunction must be read in the context 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 (1924), and the opinion issued alongside it. *See Swift & Co. v. United States*, 276 U.S. 311, 328 (1928); *Barnes v. Chi., Milwaukee & St. Paul Ry. Co.*, 122 U.S. 1, 14 (1887). Contrary to Apple's position, *see* Pet'r Br. 23, when determining whether an injunction is violated, context informs "what interpretation is best and clearest," U.S. Br. 13-14. And if an enjoined party wants to ensure that its conduct is permissible, it may ask the court to clarify or to modify the injunction's reach. *Regal Knitwear Co.*

v. N.L.R.B., 324 U.S. 9, 15 (1945). But if the enjoined party acts instead based on its own objectively unreasonable interpretation, it does so at its peril, understanding that it could be held in contempt. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947).

B. Civil contempt

1. The court's contempt power, dating back to early English common law, is an inherent authority, as this Court recognized over two centuries ago. *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227-28 (1821). The power to enforce compliance with court orders through contempt, this Court observed, is "necessary to the exercise of all" other judicial power. *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812). Because this power "is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts," it existed the "moment the courts of the United States were called into existence." *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1873).

Today, this inherent power allows courts to hold parties in civil contempt when there is no "fair ground of doubt" that they violated a court order. *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019) (emphasis omitted) (quoting *Cal. Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)). This standard balances adequate notice with the need to fully effectuate injunctions. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 832 (1994).

2. The contempt power serves three key functions in effectuating injunctions: disincentivizing the enjoined party's disobedience, protecting the party

seeking the injunction's enforcement, and preserving the court's dignity.

First, contempt deters. It ensures that injunctions function as intended by disincentivizing enjoined parties from disregarding them. *See Bagwell*, 512 U.S. at 828. Violators may face sanctions, often a fine or imprisonment, that they can avoid "through obedience." *Id.* at 827. For example, in *Spallone v. United States*, 493 U.S. 265, 270-72 (1990), the district court levied a coercive fine of $100, doubling each day, for a city's noncompliance with a consent decree requiring the city council to pass a housing ordinance. As the fines accumulated, the city yielded, with this Court noting the effectiveness of the monetary sanctions in coercing compliance. *Id.* at 277.

The contempt power also protects a party from suffering the irreparable harm that the injunction sought to remedy in the first place. *See Bessette v. W. B. Conkey Co.*, 194 U.S. 324, 328 (1904). Courts use contempt and its sanctions to coerce parties to comply with their orders and, if parties do not, to compensate the complainant for losses tied to that disobedience. *Id.*; *United States v. United Mine Workers of Am.,* 330 U.S. 258, 303-04 (1947). Without this power, the injunction would be rendered ineffective, and the complaining party would obtain no relief. An injunction, therefore, "is worth no more than its sanction, contempt." Joseph Moskovitz, *Contempt of Injunctions, Civil and Criminal*, 43 Colum. L. Rev. 780, 780 (1943).

Finally, civil contempt is necessary to uphold the courts' authority and ability to adjudicate cases "with dignity." Joseph Beale, *Contempt of Court, Criminal and Civil*, 21 Harv. L. Rev. 161, 162 (1908); *see, e.g.*,

Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 450 (1911). The threat of contempt and corresponding sanctions helps ensure that enjoined parties take court orders seriously. *See id.* at 450. Without it, the judicial power may devolve into "mere mockery," as enjoined parties could disregard injunctions and decide for themselves the boundaries of the proscribed activity. *See id.*

3. Civil contempt discourages enjoined parties from evading injunctions through rigid literalism. Although courts may modify or clarify injunctions to enjoin unanticipated conduct, *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932), those measures do not always ensure compliance. Continually resorting to modification or clarification instead of initiating contempt proceedings creates a whack-a-mole problem, motivating the enjoined party to find ways around the new prohibitions—a process that will repeat itself until the court imposes some additional consequence: civil contempt. *See McComb v. Jack. Paper Co.*, 336 U.S. 187, 192-93 (1949).

In *McComb*, the defendant was enjoined from paying a class of employees less than the minimum wage, requiring them to work more than forty hours a week without overtime pay, and failing to maintain records of employees' hours and wages. 336 U.S. at 189. This Court rejected the defendant's argument that contempt was unwarranted because the injunction broadly enjoined violations of the Act rather than the specific schemes the defendant enacted after the injunction, which included, for example, reclassifying employees to avoid the injunction's prohibitions as to those employees. *Id.* at 190, 192. Though the injunction did not expressly prohibit these

actions, this Court nonetheless held that the defendant was in contempt because its conduct achieved the same result that the injunction was intended to prevent. *Id.* at 192-93. The Court understood that insisting on tailored prohibitions "would give tremendous impetus to the program of experimentation with disobedience of the law." *Id.* at 192. And if the district court had done no more than modify the injunction to enjoin the defendant's conduct, the defendant could have altered its conduct again to circumvent the restrictions. *Id.* at 192-93. This Court appreciated the risk that, without contempt, an enjoined party could repeatedly skirt court orders with near impunity.

II. Courts need contempt in situations analogous to this case to police evasive tactics.

We now turn, in Section A below, to caselaw examples—stories that demonstrate the danger of requiring the degree of specificity that Apple maintains is demanded here. In Section B, we analogize these cases to Apple's behavior to illustrate why the district court acted within its discretion in holding Apple in contempt.

A. Case examples

In the cases below, set out in alphabetical order, the enjoined parties did not violate the injunction's literal text. But, like Apple here, they clearly evaded the injunction's commands. We describe these cases in some detail to illustrate the on-the-ground work undertaken by lower courts to honor the legal principles just discussed and to ensure the effective enforcement of injunctions.

If the decisions described below are correct, as *amici* maintain they clearly are, then the same must be true here. Apple, like the enjoined parties in these cases, attempted to rely on the literal text of the injunction to achieve the very thing that the court had enjoined.

1. ***Abbott Laboratories v. Unlimited Beverages.*** Unlimited Beverages, Inc. (UBI) began selling an electrolyte beverage called Naturalyte in 1992. 218 F.3d 1238, 1239 (11th Cir. 2000). Abbott Laboratories sued UBI for trade-dress infringement because Naturalyte's square bottle was similar to the bottle used for its electrolyte drink, Pedialyte. *Id.* at 1239-40. The district court enjoined UBI from selling "Naturalyte" "in any formulation or flavor, in the new Pedialyte-like bottle." *Abbott Lab'ys v. Unlimited Beverages, Inc.*, 1993 WL 729626, at *3 (S.D. Fla. Nov. 5, 1993) (capital letters in trade names omitted).

UBI changed Naturalyte's packaging for its own retail sales, complying with the decree. *Abbott Lab'ys*, 218 F.3d at 1240. But it also began supplying another retailer with electrolyte solution in the same square bottles that had prompted the infringement action. *Id.* UBI argued that because the decree was limited to electrolyte solution sold under the name "Naturalyte," the decree did not, by its literal words, prohibit supplying retailers with electrolyte solution in Pedialyte-like bottles that those retailers would then sell under their own private labels. *Id.* at 1241.

Neither the district court nor the Eleventh Circuit bought UBI's argument. *Abbott Lab'ys*, 218 F.3d at 1242-43. UBI had "myopically distort[ed] the common sense meaning" of the decree. *Id.* at 1241. Effectively rejecting Apple's argument here, *see* Pet'r Br. 23, the

court upheld the district court's contempt finding, observing that an injunction need not enumerate every possible way enjoined parties might violate the order when the scope of the proscribed conduct is readily ascertainable to an ordinary person. *Abbott Lab'ys*, 218 F.3d at 1241-43.

2. ***Champion Spark Plug Company v. Sanders.*** Champion Spark Plug Company manufactured and sold spark plugs under the "Champion" trademark. 331 U.S. 125, 126 (1947). Peter, Samuel, and Harry Sanders collected used Champion spark plugs to repair and resell. *Id.* The Sanders printed the Champion mark on the packaging of the repaired plugs without identifying their own company. *Id.* And although they stamped the plugs "Renewed," that marking was small and nearly illegible. *Id.*

Champion sued for trademark infringement and unfair competition, and the district court ordered the Sanders to differentiate their repaired plugs from Champion's new ones. *Champion Spark Plug Co.*, 331 U.S. at 126-27. The Sanders were enjoined from selling repaired Champion plugs unless, among other things, their metal shell and brushings had "been completely covered with permanent aluminum paint or with durable gray or brown or orange or green paint or lacquer." *Champion Spark Plug Co. v. Sanders*, 102 F. Supp. 340, 341 (E.D.N.Y. 1952).

The Sanders began to paint the metal parts of the plugs green, as the injunction required. *Champion Spark Plug Co.*, 102 F. Supp. at 341. But they added lamp black—a finely powdered soot—into the green paint, darkening the color so as to make it appear black and thus resemble new Champion plugs. *Id.* Though the Sanders complied literally with the

injunction, because the parts were black "for all practical purposes," the Sanders had violated the injunction and were held in contempt. *Id.* at 341-42.

3. ***Davidson County v. Randall.*** James Randall excavated and sold dirt from his residential property using commercial dirt hauling trucks, bulldozers, and other heavy machinery in violation of zoning ordinances. 300 S.W.2d 618, 619, 621 (Tenn. 1957). The County maintained that this activity would cause irreparable harm to the "health, safety and morals, convenience, further prosperity and welfare" of residents. *Id.* at 619. The court agreed and enjoined "the removal and sale on a commercial basis of soil from [Randall's] property." *Id.* at 620. Randall continued to haul dirt from his property, but he gave it away rather than selling it. *Id.* He argued that he did not violate the injunction because it prohibited only soil *sales*. *Id.* The court held Randall in contempt. *Id.* at 619.

The Tennessee Supreme Court affirmed, even though the injunction did not explicitly enjoin giving away the dirt. *Randall*, 300 S.W.2d at 621-22. It found that, when read in context, the injunction was intended to preserve the residential character of Randall's property, not to prevent him from making a profit. *Id.* at 621. Continuing to bring heavy trucks and equipment onto the property to dig up the dirt, whether to give it away or sell it, destroyed its residential character. *Id.* A contrary reading of the injunction would "permit defendants to evade responsibility for violating an injunction" by engaging in different conduct that accomplishes the same result as the enjoined conduct. *Id.* (emphasis omitted).

4. *Gemini Tech Services v. United States*. The U.S. Army solicited small businesses to provide logistical-support services, evaluating proposals based on technical acceptability, past performance, and cost. 180 Fed. Cl. 299, 301 (Fed. Cl. 2026). Gemini submitted a proposal, but the Army awarded the contract to another business. *Id.* Gemini sued to challenge the award, contending that only its proposal met the solicitation's criteria and that the Army improperly conducted the evaluations. *Id.* The court agreed and issued a permanent injunction requiring the Army to "conduct a new evaluation of the offerors' *initial proposal submissions* in accordance with the *Solicitation*." *Id.* at 301-02.

The Army asserted that it reevaluated the initial proposals, but it then amended the original solicitation and requested revised proposals. *Gemini Tech*, 180 Fed. Cl. at 302. Gemini objected, arguing that the request for revised proposals violated the order to reevaluate the offerors' *initial* proposals. *Id.* The Army responded that it had in fact complied literally with the injunction because it had reevaluated the initial proposals, "even though," as the court later put it, "it rendered that exercise meaningless by subsequently amend[ing] the Solicitation and requesting revised proposals." *Id.*

The court rejected the Army's narrow understanding of the injunction. *Gemini Tech*, 180 Fed. Cl. at 302-03. As a matter of common sense, the order to reevaluate the initial proposals included the requirement to base the procurement decision on that reevaluation. *Id.* at 303. The court explained: "A party may not do indirectly what he is barred from doing directly, and he may not evade a permanent injunction

by relabeling conduct or maneuvering around the intended actions in a way that would frustrate the injunction's remedial purpose." *Id.*

5. ***John B. Stetson Company v. Stephen L. Stetson Company.*** The John B. Stetson Company, the famous hat manufacturer and owner of the "Stetson" trademark, dates back to the 1860s. *John B. Stetson Co. v. Stephen L. Stetson Co.*, 85 F.2d 586, 586 (2d Cir. 1936). In the 1930s, Stephen L. Stetson started his own hat business: the Stephen L. Stetson Company. *Id.* The original company sued the new company for trademark infringement and unfair competition, resulting in a decree enjoining the Stephen L. Stetson Company from using "Stetson" on hats or in advertising unless accompanied by a notice that read: "Never Connected in Any Way with John B. Stetson Company." *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 982 & n.1 (2d Cir. 1942). The notice had to be "reasonably legible" from five feet away, "always visible when the name 'Stephen L. Stetson' [was] visible," and positioned so retailers could not hide the notice without also hiding the name. *Id.* at 982 n.1.

The new company complied with the decree but soon began to increase the size of the "Stetson" name and reduce emphasis on the disclaimer in its advertising. *John B. Stetson Co.*, 128 F.2d at 983. For instance, the name "Stephen L. Stetson" was written across the entire first line of its print advertisement, surrounded by ornamental scroll, diverting attention from the "Never Connected" line, which was buried in the body of the advertisement in letters about one-sixth the size of the name. *Id.* And the new company's store display advertising featured the Stetson name in

a font five times larger than the notice, which was tucked away in the corner. *Id.*

Based on its literal compliance, the new company asserted that it had obeyed the decree: The Stetson name was always accompanied by a visible notice of differentiation, and the decree had not specified a maximum font size. *John B. Stetson Co.*, 128 F.2d at 983. The Second Circuit disagreed. *Id.* The visible-notice requirement could not reasonably mean that the disclaimer could be legible from only five feet away while the Stetson name could be read from across the room. *Id.* Even if literally not at variance with the injunction, the new company's conspicuous use of "Stetson" effectively defeated the injunction, warranting contempt. *Id.* at 983-84.

6. ***Left Coast Wrestling v. Dearborn International.*** Left Coast Wrestling promoted an annual wrestling tournament for kids in San Diego.[3] The tournament's final round was held on the deck of the U.S.S. Midway, inspiring the name "Battle on the Midway." *Id.* Duke Le, a former member of Left Coast, and his company, Dearborn International, began promoting a similar tournament with the same "Battle on the Midway" title and characteristics. *Id.* Left Coast sued, alleging that Dearborn unlawfully appropriated the tournament idea, trademark, and other intellectual property. *Id.* The court permanently enjoined Dearborn from a range of activities and

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[3] *Left Coast Wrestling, LLC v. Dearborn Int'l, LLC*, 2018 WL 2328471, at *1 (S.D. Cal. May 23, 2018), *supplemented*, 2018 WL 2948532 (S.D. Cal. June 12, 2018), and *report and recommendation adopted*, 2018 WL 3032585 (S.D. Cal. June 19, 2018).

required it to post the injunction on Dearborn's website, informing its customers that Left Coast, not Dearborn, owned the "Battle of the Midway" mark.[4]

Dearborn literally complied, posting the injunction on its website. *Left Coast Wrestling, LLC*, 2019 WL 3493992, at *6-7. But the injunction did not appear on the website's homepage and could be accessed only if the user typed a specific URL into a web browser. *Id.* at *7. This purported compliance was impermissible. At a minimum, the court held, "posting" the injunction required making it accessible from the website's homepage. *Id.* Dearborn's evasion was "neither in good faith nor a reasonable interpretation" of the injunction, warranting contempt. *Id.*

7. ***NLRB v. Union Nacional de Trabajadores.*** The National Labor Relations Board found that the Union Nacional de Trabajadores had violated the National Labor Relations Act by threatening and assaulting workers who did not want to follow the Union's directives. 611 F.2d 926, 928 (1st Cir. 1979). The Board ordered the Union to publish newspaper notices stating that it would "refrain from violence and threats against any employees and from other violations of the protected rights of employees." *Id.* at 928-29.

The Union published the required notice but included a side notice right next to it stating that the Board and court forced the Union to publish the required notice. *Union Nacional de Trabajadores*, 611

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[4] *Left Coast Wrestling, LLC v. Dearborn Int'l, LLC*, 2019 WL 3493992, at *1, *6 (S.D. Cal. Aug. 1, 2019), *report and recommendation adopted*, 2019 WL 3891171 (S.D. Cal. Aug. 16, 2019).

F.2d at 929. The side notice characterized the Board's actions as part of an "anti-labor conspiracy," stating that the Board lacked jurisdiction to issue its orders, the orders violated the Constitution, and the Union remained committed to defending workers' rights. *Id.* The side notice also called on workers to "repudiate" "anti-labor" federal law and Board regulations. *Id.* at 935.

Responding to the Board's petition to hold the Union in contempt, the First Circuit held that, although the Union complied with the order's literal terms, the side notice "destroyed the substance and purpose of the required notice" to reassure workers that they would no longer face Union threats or violence. *Union Nacional de Trabajadores*, 611 F.2d at 928-30. The court held the Union in contempt and ordered it to republish the required notice without the side notice. *Id.* at 930, 933.

8. ***Scandia Down Corporation v. Euroquilt.*** Scandia Down sold down comforters nationwide. 772 F.2d 1423, 1425 (7th Cir. 1985). Since at least 1976, it had used the following logo:



Euroquilt also sold bedding, initially under the name "Euroquilt and Continental Quilt." *Scandia Down Corp.*, 772 F.2d at 1425. But, later, in 1982, Euroquilt adopted a new name emblazoned on this logo:



Scandia sued, and the district court enjoined Euroquilt from using its logo "or any colorable imitation thereof." *Scandia Down Corp.*, 772 F.2d at 1425. Euroquilt responded by adopting a series of modified logos that retained key features of the prohibited design. *Id.* at 1426. Each time Scandia objected, Euroquilt made a slight alteration, for example, by changing the stationary-geese outline depicted above to a goose in flight. *Id.* After the third and fourth renditions, the district court held Euroquilt in contempt for violating the injunction. *Id.*

Euroquilt argued that contempt was inappropriate because the injunction did not specifically prohibit its logos. *Scandia Down Corp.*, 772 F.2d at 1431. The court of appeals disagreed, explaining that though Rule 65 demands specificity, it does not require judges to anticipate and specifically prohibit all of the ways parties could violate an injunction. *Id.* at 1431-32. "The more specific the order, the more opportunities for evasion ('loopholes'). There are millions of possible logos to which Euroquilt could have turned. Any effort to identify and prohibit one million of them would have left another million or more subject to dispute." *Id.* at 1431.

9. ***Schering Corporation v. Illinois Antibiotics Company***. Irving Rossoff, a veterinarian, sold an animal drug called gentamicin sulfate without an FDA-required license. 62 F.3d 903, 905 (7th Cir. 1995). Schering, an FDA gentamicin-sulfate licensee, sued

Rossoff for selling the drug without the required license. *Id.* The court permanently enjoined Rossoff "from selling or distributing gentamicin sulfate reagent solution for therapeutic use in animals unless such reagent solution is expressly approved for such use by the FDA." *Id.*

Still without an FDA license, Rossoff began selling the drug in powdered form, with instructions for purchasers to dissolve the powder in water, apparently on the theory that the injunction's reference to a "solution" did not cover powder. *Schering Corp.*, 62 F.3d at 905. The district court rejected Schering's contempt motion, holding that the injunction was too narrow to reach the drug's powdered form. *Id.* at 906.

The Seventh Circuit reversed. *Schering Corp.*, 62 F.3d at 909. It noted the general rule that injunctions are construed narrowly to ensure that enjoined parties have adequate notice of their prohibitions. *Id.* at 906. "But like most legal rules, the rule of strict construction of injunctions should not be pressed to a dryly logical extreme." *Id.* A change in form alone, such as from liquid to powder, does not put otherwise prohibited conduct beyond the scope of an injunction. *Id.* at 907. The Seventh Circuit reasoned that interpreting injunctions with "narrow literalism" would create loopholes and invite a flood of requests for modification. *Id.* at 906.

10. ***Smolczyk v. Gaston.*** Gayle Gaston sued Robert and Bernadette Smolczyk, claiming that the Smolczyks' noisy dance hall was a nuisance. 24 N.W.2d 862, 863 (Neb. 1946). The court agreed, enjoining "the operation of public dances … reasonably

apt to induce the gathering of a large crowd upon the premises." *Id.* at 863-64.

Undeterred, the Smolczyks began leasing out the building for large and frequent "private" dances. *Smolczyk*, 24 N.W.2d at 864. Dance sponsors would sign a lease with the Smolczycks "agree[ing] to sponsor a private dance, by invitation only," on a specified date. *Id.* A sign was placed in the hall declaring: "This is a 'Private' dance. Only invited guests allowed." *Id.* Sponsors held up to ten dances a month, and the same people regularly came to all dances. *Id.* As a result, nuisance conditions around the hall—cars starting and honking and other noises usual to large gatherings—were still present. *Id.*

Gaston sought contempt. *Smolczyk*, 24 N.W.2d at 864. The Smolczyks responded that the injunction restricted use of the premises only as a "public dance hall," so its use as a "private dance hall" was not proscribed. *Id.* Rejecting this argument despite the Smolczyks' literal compliance, the court held that the injunction's prohibition against operating a "public dance hall" extended to the new parties because having a sponsor sign a lease to host a dance did not change the nature of the gathering. *Id.* Neither did having a "private" sign posted in the dance hall. *Id.* The "meticulous care employed" by the Smolczyks to portray the gatherings as private dances, the court observed, only undermined their argument by evidencing "subterfuge to escape the restraining provisions of the injunction." *Id.* at 864-65.

11. ***United States v. Christie Industries***. The United States sued Christie Industries for unlawfully shipping firecracker-assembly kits to minors. 465 F.2d 1002, 1005 (3d Cir. 1972). The court enjoined Christie

from selling or "causing to be delivered for introduction into interstate commerce the aforesaid fireworks assembly-kits." *Id.* at 1005 n.2. The order listed the kits' components. *Id.*

The Government then sought contempt, maintaining that Christie had violated the injunction because Christie had sent minors the constituent components necessary to assemble fireworks. *Christie Indus., Inc.*, 465 F.2d at 1008-11. Christie argued that because the components were now sold individually rather than together in one "kit," its conduct fell beyond the injunction's terms. *Id.* at 1006, 1009-10. Christie also argued that the injunction did not prohibit shipments that contained alternative components to the components listed in the enjoined firework kit. *Id.* at 1009.

The Third Circuit disagreed, holding that selling the components of the "kit" separately and then shipping them in a single package violated the injunction. *Christie Indus., Inc.*, 465 F.2d at 1006-07. Nor could the prohibition be circumvented by substituting components, such as replacing cylindrical casings with non-cylindrical ones. *Id.* When an injunction gives fair notice to an enjoined party of the prohibited acts, the court observed, it cannot be avoided "on merely technical grounds." *Id.* The Third Circuit thus upheld Christie's criminal contempt conviction. *Id.* at 1011-12.

12. ***Zest Anchors v. Geryon Ventures.*** Zest Anchors manufactured products used to secure dentures to a patient's jaw. *Zest Anchors, LLC v. Geryon Ventures, LLC*, 2023 WL 2783175, at *1 (9th Cir. Apr. 5, 2023). It sued Geryon Ventures for imitating a line of Zest's products known as the

LOCATOR® product suite. *Id.* The court prohibited Geryon from directly or indirectly using or importing into the United States any products using "Zest's LOCATOR® product suite trade dress or any trade dress that is a colorable imitation thereof, or confusingly similar thereto." *Zest Anchors, LLC v. Geryon Ventures, LLC*, 2022 WL 16838806, at *1 (S.D. Cal. Nov. 9, 2022).

Geryon stopped selling the challenged products in the United States but continued to sell separately the constituent parts that made up the challenged products to distributors outside the country. *Zest Anchors*, 2022 WL 16838806, at *1. Despite Geryon's purported compliance, the court determined that this was an "impermissible end-run around" the injunction because even though the individual components were non-infringing, Geryon knew that those parts would be combined into an infringing whole and sold to customers in the United States, who would then be confused by the products' similarity to Zest's product suite. *Id.* at *2. If Geryon harbored serious doubts about the scope of the injunction, it could have easily asked the court for clarification. *See id.* at *4. Instead, Geryon attempted to evade the injunction and "assumed the risk that [its] attempts at technical compliance would prove wanting." *Id.* (quotation marks omitted).

B. Apple's evasion and the propriety of holding it in contempt

1. The caselaw just discussed illustrates the careful work undertaken by courts to effectuate their injunctions: examining the facts before them, reading the injunction's terms in context, and determining

whether the injunction's text has been violated—and, if so, whether a contempt finding is warranted. Their inquiries, like the inquiry conducted by the lower courts here, were based not on an abstract understanding of the injunction's "spirit" but on the practical need to ensure the injunction's effectiveness by deterring creative evasion.

This case is no different. The district court enjoined Apple from prohibiting developers from including in their apps calls to action to third-party purchasing mechanisms. *See* Pet. App. 59a-60a. Although Apple ostensibly allowed these calls to action, it placed severe restrictions on what they could look like and where they could be placed. It also burdened developers with a 27% commission on purchases made through those mechanisms, which made off-app purchases more expensive than using Apple's own system. Taken together, these measures effectively prohibited developers from using the calls to action demanded by the injunction. *See* Pet. App. 34a n.9.

Just as the veterinarian in *Schering* changed the drug's form to evade the injunction, 62 F.3d at 905, Apple changed the form of its prohibition—from a categorical ban on calls to action to an effective one. Like the defendant in *Left Coast Wrestling* posted the injunction on its website yet prevented consumers from viewing it, 2019 WL 3493992, at *7, Apple formally allowed calls to action to third-party-payment processing systems but effectively prevented developers from actually using them. As Stephen L. Stetson implemented the notice of differentiation but minimized its visibility, *John B. Stetson Co.*, 128 F.2d at 983, Apple installed clickable text but restricted the characteristics that users typically associate with an

online button. The same way that Euroquilt tweaked its logo to evade the injunction while preserving key infringing characteristics, *Scandia Down Corp.*, 772 F.2d at 1426, Apple skirted the injunction while maintaining the same anticompetitive qualities of its previous prohibition.

2. Apple's conduct, like the conduct in the cases described above, warranted contempt. Apple was on notice that it could not "prohibit" developers from including calls to action to external purchasing platforms. Pet. App. 135a & n.63; *see* Resp. Br. 3. The injunction did not (and could not) exhaustively catalogue the myriad ways in which Apple could "prohibit" calls to action, so it did not expressly enjoin severe button restrictions or excessive commissions. "[B]ut Rule 65 does not require it to do so." Pet. App. 13a. As discussed earlier (at 5-6), broad language encompassing a range of conduct is permissible—and indeed may sometimes be preferable where hyper-specificity increases the risk of evasion.

The district court issued its injunction to remedy the "informational harm" Epic's customers suffered from being denied knowledge of alternatives to Apple's in-app purchasing system. Pet'r Br. 2-3. To learn about these alternatives, consumers needed access to buttons that linked to alternative systems, and developers needed reason to expect that consumers would see and use them. *See* Pet. App. 58a-59a. Reading the injunction in this context, an ordinary person in Apple's shoes would have understood that a set of measures discouraging consumers from using calls to action to external purchasing platforms and making them financially infeasible for developers to implement would violate the injunction. As the Ninth

Circuit recognized, Apple's restrictions prevented developers from implementing these link-out purchases, which "effectively stripp[ed] consumers of access to information about other purchase options." Pet. App. 34a n.9. Because there was no "fair ground of doubt" that these restrictions violated the injunction, *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019), the court was well within its discretion to find Apple in contempt instead of risking repeated attempts at evasion.

3. By contrast, if this Court adopts Apple's argument that its restrictions were not prohibited by the injunction, future evasive conduct of the kind described in the cases above will escape deterrence.

Taking Apple's argument to the logical next step, any restriction on calls to action short of a categorical ban would be permissible. For example, Apple could implement a 300% commission, *see* U.S. Br. 10, and still insist that it did not violate the injunction. But we need not assess Apple's argument based solely on hypotheticals. After all, as to the requirement that it allow buttons, Apple authorized only "invisible" buttons. *See* U.S. Br. 27; Pet'r Br. 42 (asserting that a button "need not be visible"). That is, it prohibited the filled-in outline that a user typically associates with a "button" and permitted only plain text. *See* U.S. Br. 27.

The district court and Ninth Circuit recognized the danger of adopting Apple's argument, and their inquiries into Apple's conduct establish that contempt was warranted under the governing *Taggart* standard. What, then, if anything, is left for this Court to resolve? We turn now to that question.

III. The Court should take a minimalist approach to resolving this case.

Though the power to hold enjoined parties in contempt for violating court orders can be among the most potent a court exercises, *see* Pet'r Br. 1, here, the district court, as affirmed in part by the Ninth Circuit, did not exercise close to that full power. The district court held Apple in contempt, but Epic did not seek jail time or even a fine, and those remedies were not imposed. *See* Pet. App. 53a n.2. Epic sought only to enforce the injunction, and the court responded by specifically enjoining Apple's new prohibitive conduct, Pet. App. 8a-9a, an action that a court can take without a contempt finding, *see* Pet'r Br. 29-30. And the substance of that remedy is not before this Court. Whatever the result in this Court, the district court remains free to modify the injunction. All told, then, the only concrete consequence of the contempt finding is the potential stigma that it carries, as Apple acknowledges. *See id.* at 30.

Apple and Epic agree on the governing standard for imposing civil contempt, *see* Pet'r Br. 19; Resp. Br. 18, so the only question before this Court is how to apply that standard to the facts of this case—a task that this Court only rarely undertakes, *see* Sup. Ct. R. 10, and that the lower courts are better suited to handle, *see U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 397-98 (2018). And it is a duty that the district court has been exercising diligently to date. Pet. App. 50a-165a (setting forth the district court's 80-page order finding Apple in contempt after two sets of comprehensive evidentiary hearings).

For these reasons, and those provided in Epic's brief (at 17-44), this Court should affirm. After all, the Court reviews judgments, not opinions, *Jennings v. Stephens*, 574 U.S. 271, 277 (2015), and the lower courts' findings that Apple violated the *text* of the injunction amply supports contempt, Pet. App. 19a-25a. But if the Court finds that the Ninth Circuit's reference to the "spirit" of the injunction demands this Court's intervention, it should do no more than vacate and remand with instructions that the contempt ruling be reconsidered based on the injunction's text, the litigation context in which the injunction was issued, and the *Taggart* standard that the parties agree governs here.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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November 19, 2026

APPENDIX

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Appendix: List of *Amici Curiae*.....1a

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Amici Curiae Former Article III Judges and the Courts on Which They Served

John Winslow Bissell, United States District Court for the District of New Jersey (Ret.)

Robert J. Cindrich, United States District Court for the Western District of Pennsylvania (Ret.)

Allyson K. Duncan, United States Court of Appeals for the Fourth Circuit (Ret.)

William Royal Furgeson Jr., United States District Court for the Western District of Texas & United States District Court for the Northern District of Texas (Ret.)

Nancy Gertner, United States District Court for the District of Massachusetts (Ret.)

Thelton Henderson, United States District Court for the Northern District of California (Ret.)

John E. Jones III, United States District Court for the Middle District of Pennsylvania (Ret.)

Paul R. Michel, United States Court of Appeals for the Federal Circuit (Ret.)

Liam O'Grady, United States District Court for the Eastern District of Virginia & United States Foreign Intelligence Surveillance Court (Ret.)

Kathleen M. O'Malley, United States District Court for the Northern District of Ohio & United States Court of Appeals for the Federal Circuit (Ret.)

Philip M. Pro, United States District Court for the District of Nevada (Ret.)

Deanell Reece Tacha, United States Court of Appeals for the Tenth Circuit (Ret.)

Ursula Ungaro, United States District Court for the Southern District of Florida (Ret.)

Thomas I. Vanaskie, United States District Court for the Middle District of Pennsylvania & United States Court of Appeals for the Third Circuit (Ret.)