

No. 25-521

IN THE
Supreme Court of the United States

GOOGLE LLC, *et al.*,

Petitioners,

v.

EPIC GAMES, INC.,
A MARYLAND CORPORATION,

Respondent.

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

**BRIEF OF *AMICI CURIAE* CHAMBER OF
PROGRESS AND NETCHOICE IN SUPPORT
OF THE PETITION FOR CERTIORARI**

BENJAMIN BERKOWITZ

Counsel of Record

SARA R. FITZPATRICK

KEKER, VAN NEST & PETERS LLP

633 Battery Street

San Francisco, CA 94111

(415) 391-5400

bberkowitz@keker.com

Counsel for Amici Curiae

387211



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(800) 274-3321 • (800) 359-6859

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INTERESTS OF THE *AMICI*¹

Amici Chamber of Progress and NetChoice respectfully submit this brief in support of the petition for certiorari, in particular to address the overbroad antitrust remedy upheld by the Ninth Circuit.

Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, to promote innovation and economic growth, and to empower technology customers and users. It has a direct interest in ensuring that antitrust remedies in the technology sector promote rather than inhibit innovation and that such remedies do not inadvertently harm consumer welfare by imposing overly restrictive obligations on digital platforms.

Chamber of Progress's work is supported by its corporate partners, but its partners do not sit on its board of directors and do not have a vote on, or veto power over, its positions. Chamber of Progress does not speak for

1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to this Court's Rule 37.2(a), this brief has been filed earlier than 10 days before the due date for *amicus* briefs.

individual partner companies, and it remains true to its stated principles even when its partners disagree.

NetChoice is a national trade association of online businesses that share the goal of making the internet safe for free enterprise and free expression. NetChoice's members operate a variety of popular websites, apps, and online services, including Meta (formerly Facebook), Google, and Amazon.² NetChoice's guiding principles are (1) promoting consumer choice, (2) continuing the successful policy of "light touch" internet regulation, and (3) fostering online competition to provide consumers with an abundance of services. NetChoice has a substantial interest in this case because the Ninth Circuit's decision fundamentally alters how digital platforms operate, undermining the careful balance between openness and security that platforms must maintain to protect consumers and foster innovation.

The Ninth Circuit's decision upholding an unprecedented injunction against Google contravenes this Court's precedent and threatens the balance of the app economy. *Amici* have a strong interest in ensuring that the app economy, and the digital economy generally, remain competitive and innovative.

2. A full list of NetChoice's members is available at <https://netchoice.org/about/>.

SUMMARY OF THE ARGUMENT³

This Court should grant certiorari in order to correct a decision that conflicts with this Court’s approach to antitrust remedies. Antitrust remedies must be crafted with caution, lest they “wind up impairing rather than enhancing competition.” *NCAA v. Alston*, 594 U.S. 69, 102 (2021). Imposing a duty to deal is particularly disfavored. *Verizon Commc’ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 415 (2004) (“No court should impose a duty to deal that it cannot explain or adequately and reasonably supervise.”). Yet the injunction upheld by the Ninth Circuit is anything but cautious: it imposes a sweeping duty to deal that will reshape the app economy and dangerously expand the scope of available antitrust remedies. Allowing this remedy to stand could lead to widespread judicial interference not only in the app store market, but in other markets as well.

Amici submit this brief to highlight how the Ninth Circuit’s decision to uphold the trial court’s injunction conflicts with this Court’s precedent and to address the practical consequences such a sweeping injunction will have on the app economy.

First, this brief demonstrates that the injunction contradicts this Court’s antitrust precedent in two ways: the injunction imposes a duty to deal with competitors, and it imposes an unworkable system on third-party app developers.

3. Throughout this brief, unless otherwise indicated, emphases were added to quotations, while internal citations, footnotes, brackets ellipses, and the like were omitted from them.

The Ninth Circuit’s decision forces one competitor in the app store marketplace to affirmatively distribute rival app stores and to give those rival app stores access to its entire library of apps, restricts its ability to engage in content moderation, and exposes app developers and consumers to a Wild West of untested and unmoderated app stores.

Second, this brief elucidates the anticompetitive effects of the injunction, which suppresses competition in the mobile app store market, undermining the benefits that free competition confers on mobile-app consumers and developers alike.

The app economy is a thriving market encompassing an estimated 6.1 million jobs and an estimated 770,000 small businesses.⁴ Consumers downloaded an estimated 255 billion apps in 2022 alone.⁵ By offering standardized ecosystems for app development, mobile app stores like Google Play create immense value for app developers by reducing the barriers to entry and marketing, freeing

4. The App Association, *State of the App Economy* at 6 (2022) (<https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf>) (last accessed Oct. 31, 2025).

5. Abhineet Kaul, et al., *Powering the global app economy: Android and Google Play’s contributions*, Access Partnership (Apr. 9, 2024), <https://cdn.accesspartnership.com/wp-content/uploads/2024/06/Powering-the-global-app-economy.pdf?hsCtaTracking=0f69357f-9228-4f87-84b8-724e5c7553ce%7C2f52ad8f-b3b0-4789-9ec0-bf22a595eead>.

capital that developers use to improve their apps and expand their offerings.⁶

But the Ninth Circuit’s decision imposes extensive duties to deal only on Google. The injunction takes the unprecedented step of requiring one competitor in the market to grant its rivals nearly unfettered access to its services and to all the apps that it offers. The result will be to stymie competition between major competitors in the app store market and permit others to free-ride off of Google’s efforts, thereby reducing the incentive for those competitors to innovate. Though meant to promote competition, the injunction’s practical effect is to reduce it and distort the market. The Ninth Circuit did not consider these anticompetitive effects when it affirmed the injunction.

Courts “make for poor central planners” and must be wary of orders that “unintentionally suppress procompetitive innovation.” *Alston*, 594 U.S. at 102–03. The Ninth Circuit erred by affirming an injunction that requires Google to carry rival app stores in its app catalog, stock them with the apps from its own catalog, and serve as a back-end administrator for the whole arrangement. Certiorari should be granted to correct these errors both to prevent establishing defective antitrust precedent that will have far-reaching impact detrimental to competition, and to ensure that the app market is not irreparably damaged.

6. Brief for the App Ass’n as Amicus Curiae Supporting Defendants-Appellants, *Epic Games, Inc. v. Google LLC*, Nos. 24-6256, 24-6274, ECF No. 240.2, at 2 (9th Cir. Dec. 4, 2024).

ARGUMENT

I. The Ninth Circuit’s decision dangerously expands antitrust remedies beyond what is contemplated by this Court’s precedent.

The injunction upheld by the Ninth Circuit flouts the principle that, “[w]hen it comes to fashioning an antitrust remedy . . . caution is key.” *Alston*, 594 U.S. at 106. The injunction dangerously exceeds the scope of established antitrust remedies in two crucial ways.

First, the injunction requires Google to dedicate space, opportunities, and resources to its direct competitors despite longstanding precedent that, with limited exceptions, “there is no duty to aid competitors.” *Trinko*, 540 U.S. at 411–12. Requiring Google to aid its competitors not only runs afoul of precedent but “unintentionally suppress[es] procompetitive innovation.” *Alston*, 594 U.S. at 102.

Second, the injunction harms third-party app developers, forcing them to either provide their IP licenses to each new app store or run the risk that those stores will provide pirated and fake versions of their apps. The panel erred in brushing off this concern entirely.

A. The injunction warps antitrust law and forces Google to provide aid to direct competitors.

The injunction upheld by the Ninth Circuit requires Google to provide unprecedented assistance to its direct competitors, contrary to established precedent that antitrust law “does not restrict the long recognized right

of [a] trader or manufacturer . . . freely to exercise his own independent discretion as to parties with whom he will deal.” *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919). Under the injunction, Google is required not only to distribute rival app stores through the Google Play Store, but also to grant those rivals access to its entire app library. The injunction also requires Google to invent, implement, and administer a new process for third-party app developers to opt out of inclusion in those rival app stores.

These obligations run contrary to antitrust precedent. “[T]here is no duty to aid competitors.” *Trinko*, 540 U.S. at 411; *see also Fed. Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 993 (9th Cir. 2020) (“Competitors are not required to engage in a lovefest.”). Instead, “[a]s a general rule, businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing.” *Pac. Bell Tel. Co. v. linkLine Commc’ns, Inc.*, 555 U.S. 438, 448 (2009); *see Colgate*, 250 U.S. at 307 (recognizing the right of a market participant to choose “parties with whom he will deal”). This Court has subsequently reaffirmed its rule, recognizing that the Sherman Act does not simply authorize judges to require a firm to “alter its way of doing business whenever some other approach might yield greater competition.” *Trinko*, 540 U.S. at 415–16.

This Court has found only “limited exception[s]” to a firm’s right to choose with whom to do business, in cases with a history of voluntary dealing between the parties. *See Trinko*, 540 U.S. at 409 (distinguishing from *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 601 (1985)). In *Aspen Skiing*, this Court found

liability based on a refusal to deal where the defendant had terminated a voluntary course of dealing with rivals and refused to resume dealing even when compensated at full retail price, and where no legitimate business justification existed for ending the preexisting relationship. *See id.* (distinguishing *Aspen Skiing* on this basis). In *Trinko*, this Court found that *Aspen* was “at or near the outer boundary” of antitrust liability. 540 U.S. at 409. As there is no history of voluntary dealing between the parties prior to Google’s refusal to deal with Epic, this limited *Aspen Skiing* exception is not applicable to this case. *See id.* Hence, the injunction goes well beyond established precedent by imposing this duty to deal on Google.

The Ninth Circuit incorrectly dismissed the *Trinko* holding as applying only to liability determinations, not remedies. *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 948 (9th Cir. 2025). But this Court has made clear that *Trinko*’s reasoning “appl[ies] when it comes to the remedy.” *Alston*, 594 U.S. at 102. As *Trinko* itself explained, “No court should impose a duty to deal that it cannot explain or adequately and reasonably supervise.” *Trinko*, 540 U.S. at 415. Indeed, this Court has explicitly cautioned that the “continuing supervision of a highly detailed decree could wind up impairing rather than enhancing competition.” *Alston*, 594 U.S. at 102 (quoting *Trinko*, 540 U.S. at 415).

Because the panel erroneously failed to apply *Trinko* at the remedy stage, it incorrectly upheld an injunction that flouts precedent by heavily restricting Google’s ability to set its terms of dealing. The app store-distribution remedy bars Google from “prohibit[ing] the distribution of third-party Android app distribution platforms or stores

through the Google Play Store.”⁷ In short, Google must list its competitors in the Google Play Store, provide those competitors with access to all the apps listed on Google Play, and provide app developers with a means of opting out if they choose to be excluded from other app stores.

The injunction even forces Google to act as a back-end administrator for its competitors by facilitating downloads of rival app stores, moderating content, and creating and running the system through which developers choose app stores. Though the injunction includes a narrow exception for Google to take undefined “reasonable measures” to ensure that “platforms or stores, and the apps they offer, are safe from a computer systems and security standpoint, and do not offer illegal goods or services . . . or violate Google’s content standards,”⁸ Google must be prepared to prove that any measures it takes to ensure the security and legality of third-party platforms and their offerings “are strictly necessary and narrowly tailored”—terms likewise left undefined.⁹ Such a high burden of proof limits Google’s ability to respond to potential security risks and fraudulent activities. The injunction simultaneously orders Google to provide services and restricts its ability to charge for those services, supplanting the free market with a system in which the court dictates a private company’s offerings.

Further, the injunction contemplates challenges to Google’s technical and content requirements but does

7. Inj. at ¶¶ 11–12, Ex. B, ECF No. 6.2.

8. *Id.* at ¶ 12.

9. *Id.*

not explain how such disputes will work, who may bring them, or what will happen while disputes are pending.¹⁰ This undefined regime is the very “day-to-day control[]” that this Court warned against in *Trinko*. 540 U.S. at 415.

Worse yet, the injunction provides no guidance on any of these points. It does not address what security protections Google can provide for the new services it has been ordered to supply, what contractual terms will govern relationships between apps and third-party app stores, what data third-party app stores are permitted to collect, or who will provide customer support when things go wrong.

The injunction further limits Google’s content and technology standards by requiring that review measures be “comparable to the measures Google is *currently* taking for apps proposed to be listed in the Google Play Store.”¹¹ This requirement undermines Google’s practice of constantly updating its policies and enforcement to achieve its content and security goals. For example, in 2024, Google required app developers to comply with multiple policy updates covering issues including photo and video permissions,¹² medical-app functionality,¹³ the

10. *See id.*

11. *Id.*

12. Play Console Help, *Policy Announcement: April 3, 2024*, <https://support.google.com/googleplay/android-developer/answer/14594990> (last accessed Oct. 31, 2025).

13. Play Console Help, *Policy Announcement: October 30, 2024*, <https://support.google.com/googleplay/android-developer/answer/15444680> (last accessed Oct. 31, 2025).

use of third-party code, minimum functionality standards, and registration of developers that provide sensitive services relating to financial products and services, health, virtual private networks (VPNs), and the government.¹⁴

Under the injunction, however, Google’s policy updates could be challenged not only for being “unreasonable” or “insufficiently tailored,” but simply for being *too new*. This provision effectively requires Google to freeze its standards for three years; in a rapidly evolving technological and legal landscape, these restrictions not only place the company at a competitive disadvantage, but also potentially expose consumers to new cybersecurity risks.¹⁵ The panel erred in failing to adequately address these security concerns.

The injunction’s limitations on Google’s content and technology requirements likewise stand to harm consumers. As explained by Google’s Operations Manager, Google is “constantly updating [its] Google Play policies to stay ahead of changes in the market or new types of abuse, and to help make sure that content is age-appropriate.”¹⁶ Among the content Google seeks to exclude are “apps that are deceptive, malicious, or intended to abuse or misuse

14. Play Console Help, *Policy Announcement: July 17, 2024*, <https://support.google.com/googleplay/android-developer/answer/14993590> (last accessed Oct. 31, 2025).

15. *Epic vs. Google: What About Mobile Malware?*, Threat Fabric (Oct. 21, 2014), <https://www.threatfabric.com/blogs/epic-versus-google-what-about-mobile-malware> (last accessed Oct. 31, 2025).

16. Google Safety Center, *How we help keep Google Play safe for users and developers*, https://safety.google/intl/en_us/stories/google-play-safety/ (last accessed Oct. 31, 2025).

any personal data”; “egregious content” such as hate speech, violence, or child endangerment; low-quality apps that crash frequently or fail to load; and apps that violate intellectual-property rights or impersonate other apps.¹⁷ By undermining Google’s ability to stay up to date with its standards, the injunction puts consumers’ privacy and security at risk.

Finally, the injunction contravenes long-standing precedent that courts are “ill-equipped and ill-situated” in making decisions “to sacrifice competition in one portion of the economy for greater competition in another portion,” which are decisions that must be made by Congress. *United States v. Topco Assocs., Inc.*, 405 U.S. 596 (1972). The district court is “neither [an] economic nor industry expert[]”; and in this case, it has “impose[d] a duty that it cannot explain or adequately and reasonably supervise.” *Alston*, 594 U.S. at 102–03.

B. The injunction forces third-party app developers to provide valuable intellectual property licenses, subject to a problematic opt-out provision.

Besides requiring Google to make the Play Store’s entire app catalog available to rival app stores, the injunction forces app developers to license their apps to Google’s app store competitors by default, unless the developers opt out. In other words, the injunction requires Google to provide its entire catalog of apps to consumers and to provide third-party app developers “with a mechanism for opting out of inclusion in catalog

17. *Id.*

access for any particular third-party Android app store.”¹⁸ This opt-out process replaces normal intellectual-property licensing negotiations with an undefined mechanism administered by Google. It places the burden and cost on app developers to proactively seek to opt out of every Android app store where they do not want their apps to be offered.¹⁹

The injunction’s opt-out provision, like many of its other provisions, is ill-conceived. The injunction leaves Google to figure out how the opt-out mechanism will function. App developers who were not parties to this case and had no say in the proceedings must now spend time and resources sifting through Play Store competitors to determine which ones to opt out of doing business with.

Because app developers must affirmatively opt *out* of inclusion in other app stores, any app listed on the Google Play Store risks being added automatically to new app stores that may crop up over time. This creates risks for security and IP licensing.²⁰ It is unclear how app developers are expected to negotiate to give app stores licenses to list their apps or what contract terms will govern app developers when they are automatically included in new app stores. App developers who decide *not* to list their apps in new app stores run the risk that those app stores will instead list pirated and counterfeit versions of their apps. And because the injunction also limits Google’s content-moderation powers, Google will

18. Inj. at ¶11, Ex. B, ECF No. 6.2.

19. *Id.*

20. Brief for the App Ass’n, *supra* n. 6, at 17.

have limited ability to help app developers address counterfeit content.

The injunction's requirement that Google create the mechanism for app developers to opt out of other stores itself raises concerns.²¹ The injunction includes no guidelines for Google's design of the mechanism, and Google has no incentive to optimize its performance in its unwanted role as administrator. Indeed, because Google will be creating the mechanism for app developers to opt out of inclusion in rival app stores, Google will have a conflict of interest in administering this mechanism. Google's economic interests discourage it from providing a smooth system for app developers to decide where to list their apps, because Google loses out any time a developer lists an app on a rival app store.

The Ninth Circuit's decision brushes off concerns about developers' intellectual property and security, breezily concluding that app developers would be unlikely to want to opt out of any stores and that the injunction's vague provision for Google to take security measures alleviates all security concerns. *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 957 (9th Cir. 2025).

II. The injunction stifles competition, harming consumers and small developers.

The injunction may be intended to increase competition, but it will have the opposite effect. *Alston*, 594 U.S. at 102 (warning that "continuing supervision of a highly detailed [antitrust] decree could wind up impairing rather

21. Inj. at ¶11, ECF No. 6.2, Ex. B.

than enhancing competition”). The injunction is likely to stifle innovation, making the Google Play Store the sole ecosystem for disseminating apps and removing any incentive for firms to evolve their products. The Ninth Circuit erred in failing to consider this consequence, in spite of this Court’s admonition that forced sharing is in “tension with the underlying purpose of antitrust law, since it may lessen the incentive” of competitors to innovate. *Trinko*, 540 U.S. at 407–08.

Competition benefits consumers by allowing them to “mak[e] free choices between market alternatives.” *CollegeNET, Inc. v. Common Application, Inc.*, 711 F. App’x 405, 406 (9th Cir. 2017). Antitrust law is designed to “protect the integrity of the market system by assuring that competition reigns freely,” resulting in product differentiation. *United States v. Syufy Enters.*, 903 F.2d 659, 663 (9th Cir. 1990). In a healthy marketplace, competitors are incentivized to differentiate themselves by providing lower prices, improved features, and specialized services.

One way that Google differentiates itself from its competition is by supporting app developers. Google provides tools and services to help developers “test, monitor, and iterate their apps and games”; free educational content for developers; and digital payment infrastructure to enable developers to monetize their apps.²² In a healthy marketplace, Google’s competitors are incentivized to find their own ways to attract developers and consumers.

22. Google Play, *Helping Developers Succeed*, <https://support.google.com/googleplay/android-developer/answer/9969970?hl=en> (last accessed Oct. 31, 2025).

By forcing Google to carry its competitors in its Google Play Store and to provide its entire app catalog to them, the injunction eliminates all incentive for rival app stores to differentiate their content from that of the Google Play Store. Instead, they can freely take advantage of the services that Google provides without incurring any of the related costs. As the Tenth Circuit has observed, “[f]orcing firms to help one another . . . risk[s] reducing the incentive both sides have to innovate, invest, and expand—again results inconsistent with the goals of antitrust.” *Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1073 (10th Cir. 2013). Epic’s own expert explained that the best way for a rival app store to compete with Google is to “offer distinctive content not available on the Google Play Store.”²³

Under the injunction, however, a rival app store can simply “piggyback on its larger rival” by copying the Google Play Store’s offerings at no cost. *Novell*, 731 F.3d at 1073. The result will replace meaningful competition with a homogenous app store marketplace. Even the district court acknowledged that its injunction would likely result in a period of “reduced competition.” There is no consumer benefit to a market full of Play Store clones.

At the same time, the injunction diminishes Google’s incentive to compete and innovate in the market by forcing it to support its rivals, which harms the consumers and app developers who benefit from free competition. Google will be “deterred from investing, innovating, or expanding . . . with the knowledge [that] anything it creates it could

23. Bernheim Statement, ¶ 48, No. 3:21-md-02981-JD, (N.D. Cal. Apr. 11, 2024), ECF No. 952-1.

be forced to share.” *Novell*, 731 F.3d at 1073. Courts have acknowledged that “a firm that has engaged in the risks and expenses of research and development” loses incentive to innovate when forced to share the benefits of its work with rivals. *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 281 (2d Cir. 1979).

The injunction will degrade the quality of the Android app ecosystem. As discussed *supra*, the injunction recognizes Google needs to take “reasonable measures” to ensure the safety and legality of apps on third-party app stores, which effectively transforms Google into a guarantor of third-party conduct. Third-party app stores and developers can point to these parts of the injunction and disclaim responsibility for security breaches, content violations, or legal infractions by asserting that Google failed to take adequate “reasonable measures” to prevent such occurrences. This shifting of accountability is both inequitable and counterproductive, as it incentivizes third parties to externalize risk rather than implement robust internal safeguards.

The injunction simultaneously acknowledges that Google, as the owner of Android, bears ultimate responsibility for the security and content of the apps in the Android environment, while greatly restricting Google’s ability to actually guarantee a user experience with safe and legal apps. The most effective method for Google to ensure comprehensive compliance with its security protocols and content standards would be to maintain centralized oversight through the Play Store’s established review and approval processes—precisely the mechanism the injunction prohibits.

At bottom, illegal, dangerous, and insecure content will permeate the Android ecosystem as a result of the injunction. Third-party app stores are incentivized to shift ultimate security and legal responsibility to Google, and decentralized distribution of apps will functionally impede Google’s ability to enforce safety and content standards. The antitrust laws were designed to prevent consumer harm through product degradation, yet this remedy achieves the opposite result. *See, e.g., Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 52 (1911) (“[T]he evils which led to the public outcry against monopolies [include] . . . [t]he danger of deterioration in quality of the monopolized article. . . .”). This Court must curtail the disturbing trend of lower courts circumventing *Trinko* to the detriment of competition and consumers.²⁴

Decreased innovation and damaged user experience unquestionably harm consumers and app developers, creating a result that is exactly the opposite of what antitrust law is meant to achieve. For these additional reasons, the panel erred in affirming the injunction.

24. Vidushi Dyal, *If Courts Care About Innovation, They Will Stop Forcing Tech Companies to Share with Their Rivals*, Chamber of Progress (Sept. 25, 2025), <https://progresschamber.org/insights/if-courts-care-about-innovation-they-will-stop-forcing-tech-companies-to-share-with-their-rivals/>.

CONCLUSION

For the reasons set forth above, *amici* respectfully urge the Court to grant the petition for certiorari.

Respectfully submitted,

BENJAMIN BERKOWITZ
Counsel of Record
SARA R. FITZPATRICK
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111
(415) 391-5400
bberkowitz@keker.com

Counsel for Amici Curiae

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