No. _____

# In the
# Supreme Court of the United States

APPLE INC.,

*Applicant*,

v.

EPIC GAMES, INC.,

*Respondent*.

**APPLICATION DIRECTED TO THE HONORABLE ELENA KAGAN TO STAY MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT PENDING CERTIORARI**


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## RULE 29.6 STATEMENT

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

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Rule 23 of the Rules of this Court, 28 U.S.C. § 2101(f), and the All Writs Act, 28 U.S.C. § 1651, Applicant Apple Inc. ("Apple") respectfully applies for a stay of the issuance of the mandate of the United States Court of Appeals for the Ninth Circuit, pending the timely filing and disposition of Apple's forthcoming petition for a writ of certiorari and any further proceedings in this Court. The Ninth Circuit's mandate is currently scheduled to issue on Tuesday, May 5, 2026. Alternatively, Apple suggests that the Court treat this application as a petition for a writ of certiorari and grant the writ so the case may be considered and resolved as expeditiously as practicable next term. *See Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44, 44 (2023). Finally, Apple requests an administrative stay or, if the mandate issues during this Court's consideration, that the Court recall the mandate. *See Food Mktg. Inst. v. Argus Leader Media*, 585 U.S. 1055, 1055 (2018).

## INTRODUCTION

This case brought by Epic Games, Inc. ("Epic") against Apple challenges the rules for the global mobile applications market—a multi-hundred-billion-dollar market pioneered by Apple. The latest round of litigation concerns the district court's ruling holding Apple in civil contempt for charging a commission on so-called linked-out purchases—purchases of digital goods in apps running on Apple's operating system and downloaded from the App Store, but which take place on a third-party payment system. The Ninth Circuit affirmed the contempt finding by concluding that Apple violated the "spirit" of the district court's original injunction

by charging such a commission, even though the panel acknowledged that the injunction's "text" said nothing at all about commissions. *See* App. 44a n.9 (Opinion, ECF No. 170).[1] That "spirit"-based approach sharply conflicts with the contempt standard in other circuits. Worse still, the Ninth Circuit upheld a sweeping injunction that enjoins Apple's conduct with respect to *all* registered developers—literally millions—even though Epic alone pursued this case. The panel then ordered a remand proceeding for the district court to decide what commission Apple may charge. Initially, the Ninth Circuit agreed to stay the issuance of its mandate so that Apple could file a certiorari petition, *id.* at 4a (Stay Order, ECF 188), but then it reversed itself, *id.* at 1a-3a (Order Reconsidering Stay, ECF 192). A stay is now needed before Apple is forced to litigate its commission rate under an erroneous and prejudicial contempt label—in proceedings that could reshape the global app market—before this Court can consider whether to grant review.

This case presents two questions that, at a minimum, present a reasonable prospect of both certiorari and reversal. First, the circuits are split on the standard for imposing a civil contempt sanction. In the Ninth Circuit "parties may be held in contempt for violating the spirit of an injunction," *id.* at 23a-24a, even where, as here, an injunction is silent as to the particular conduct for which the party is being held in contempt, *see id.* at 44a n.9. That holding squarely conflicts with the decisions of

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

other circuits, requiring that an order "clearly and unambiguously" proscribe—within its "four corners"—"*the precise conduct on which the contempt allegation is based*." *E.g.*, *United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005). Certiorari is warranted to resolve that clear circuit conflict, which is outcome determinative here: Apple clearly could not be held in civil contempt in other circuits for charging a commission that is nowhere mentioned in the underlying order. And the Ninth Circuit's outlier "spirit" standard is not only unfounded, but a recipe for the very abuse of the contempt power this Court has long warned against.

Second, in affirming the district court's universal injunction enjoining Apple's conduct as to *all* developers worldwide that distribute apps on the App Store's U.S. storefront, the Ninth Circuit blatantly disregarded the limits on equitable relief recognized in *Trump v. CASA*, 606 U.S. 831 (2025). *CASA* holds that, outside the class action context, equitable relief generally must be limited to the parties before the Court. Yet the injunction here enjoins Apple and the commissions it can charge with respect to millions of registered worldwide developers. It does so even though Epic never attempted to show that enjoining Apple's conduct against all other developers—like Microsoft or Spotify, who have nothing to do with Epic—was necessary to provide relief *to Epic*. Worse, in affirming the injunction's universal scope, the Ninth Circuit cemented an ill-conceived "antitrust exception" that it has already carved out to *CASA* and then expanded it to include "incipient" violations based on *state* law. This Court's review is warranted to ensure that *CASA* is not

immediately rendered a dead letter in the nation's largest circuit and to eliminate the Ninth Circuit's *ultra vires* antitrust exception.

Ordinarily, Apple would simply file a certiorari petition seeking review of these important questions. But given the Ninth Circuit's unusual reversal on staying the mandate, Apple faces irreparable harm without a stay from this Court. After affirming the civil contempt finding, the Ninth Circuit remanded this case to the district court to determine what commission Apple may charge on purchases users make outside of Apple's in-app payment processing system. That inquiry could require Apple to alter its fundamental business model with respect to all mobile app developers. Without a stay from this Court, Apple will be required to litigate that important question under the highly prejudicial taint of being (improperly) found to have acted in contempt of the court's initial order, irreparably coloring the entire proceeding. The question of whether the injunction applies to Epic, or *all* worldwide developers that distribute apps in the United States, also will affect both the nature and scope of any inquiry on remand. And Apple faces the prospect of having to reveal confidential business information in remand proceedings about the commission Apple may charge—the disclosure of which cannot be undone.

Commissions are central to the global app market that Apple created. Apple processes hundreds of billions of dollars in mobile app transactions every year. *See* Apple, *App Store in the U.S. facilitated over $400 billion in developer billings and sales in 2024* (May 29, 2025, update), https://www.apple.com/newsroom/2025/05/app-store-in-the-us-facilitated-406-billion-usd-in-developer-billings-and-sales-in-2024/.

Apple's charges on digital goods purchases compensate Apple for, among other things, the considerable investments it has made in the intellectual property-protected tools, technologies, and services that both power the iPhone, iOS, and the App Store and that provide value to developers. Regulators around the world are watching this case to determine what commission rate Apple may charge on covered purchases in huge markets outside the United States. No proceeding setting the commission Apple may charge—an endeavor that itself is fraught with challenges and raises the prospect of the courts engaging in improper rate-setting—should be allowed to unfold under the false and prejudicial auspices that Apple acted in contempt by charging a commission based on an injunction that did not even mention commissions.

The equities strongly favor a stay. Unlike many if not most requests for emergency relief, Apple does not ask this Court to stay enforcement of any law or injunction. The Ninth Circuit prohibited Apple from charging any commission on linked-out purchases until the district court approves a new commission, and Apple will continue to forgo charging a commission while its petition remains pending and throughout any proceedings in this Court, meaning that Epic faces no immediate harm. All Apple seeks here is a stay of the mandate so this Court can consider Apple's petition before it is subjected to a remand proceeding that could reshape the global app market based on the false premise that Apple engaged in civil contempt.

Alternatively, if this Court does not believe that a stay is warranted, Apple urges the Court to treat this application as a certiorari petition and grant the petition so that the important questions presented can be resolved as soon as possible.

## BACKGROUND

**1.** Apple created the iPhone and iOS, the mobile operating system that makes the iPhone work. App. 14a. Apple also developed tools and technologies to enable mobile app development and created the App Store, a two-sided marketplace with apps from millions of registered developers that use Apple's platform to reach iPhone and iOS users around the world. *Id.*; *see id.* at 152a (Direct Appeal Op., ECF 215). Apple charges only a nominal one-time $99 registration fee for developers that distribute apps on the App Store. *Id.* at 152a. But to compensate Apple for the value it provides through the iPhone, iOS, and the App Store, Apple charges developers an in-app commission on downloads of paid apps and on digital goods purchased in apps. *Id.* The commission rate typically ranges from 15-30%, with specific rates governing certain kinds of developers and certain kinds of digital transactions. Dkt. 812 at 36 (Rule 52 Order); App. 100a-01a (Civil Contempt Order, Dkt. 1508).

Apple maintains guidelines for app developers. Dkt. 812 at 32. One guideline, Section 3.1.1, historically provided that "[a]pps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than" Apple's in-app payment processing system, known also as IAP. *Id.* (emphasis and citation omitted). That provision is colloquially referred to as an "anti-steering" provision, because it prevents third-party developers from steering users to alternative purchasing mechanisms. *Id.* So, under Apple's historical guidelines, a user who wishes to purchase digital goods via an app has in the past been required to use Apple's IAP to purchase that good, meaning that Apple receives a commission when the user makes that purchase. *Id.* at 12-15. Other

digital platforms contain similar anti-steering provisions, and this Court has recognized that such rules can be procompetitive. *See Ohio v. Am. Express Co.*, 585 U.S. 529, 551 (2018). Apple historically has also prevented developers from "encourag[ing] users to use a purchasing method other than in-app purchase" either "within the app or through communications sent to points of contact obtained from account registrations within the app (like email or text)." Dkt. 812 at 31-32, 163.

Epic is one of the largest mobile gaming developers in the world. App. 150a-52a; Dkt. 812 at 4-6. Like millions of other developers, Epic chose to make its apps available to users on iOS, thereby gaining access to Apple's tools, technologies, services, and user base. App. 14a, 158a-59a; Dkt. 812 at 14. In addition to developing games like *Fortnite*, Epic is also an app distributor through its operation of the Epic Games Store, which (like the App Store) is a marketplace where users can download games on platforms like the Mac and on Windows computers. Dkt. 812 at 16-18; App. 13a-14a. At trial, the evidence showed that approximately 100 developers distribute apps through the Epic Games Store. *See* Trial Tr. 1220:18-20 (Dkt. 620).

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

**2.** Epic filed this lawsuit against Apple in 2020, alleging claims under the federal antitrust laws and California's Unfair Competition Law. App. 14a; Dkt. 1 (Complaint). Specifically, Epic alleged that Apple's distribution and IAP requirements violated federal and state law, although Epic did not separately challenge Apple's anti-steering provision, instead pointing to that provision as one of the ways in which Apple enforces its requirement that users make digital goods purchases using Apple's IAP. Dkt. 1 ¶¶ 129-34, 184-291. Epic effectively opted out of the pending *Cameron* class action, and it did not bring this case as a class action.

The district court held a bench trial, at which Epic did not present any evidence regarding how the anti-steering provision affects its business or the business of Epic's subsidiaries. Dkt. 812 at 164. The district court held that Apple did not violate the federal antitrust laws. *Id.* at 2; App. 14a-15a. It concluded, however, that Apple's anti-steering provision violated the California UCL by preventing developers from "communicating about lower prices on other platforms," which the district court described as an "informational harm." Dkt. 812 at 93; *see also* App. 218a.

The district court entered a one-page injunction, the operative provision of which amounted to just 75 words directed to two of Apple's developer guidelines:

> 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.

App. 23a (Permanent Injunction, Dkt. 813).

No one contends that Apple violated the second clause of the above injunction. The first clause—"including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing"—mirrors almost word-for-word the provision in Apple's developer guidelines that the district court identified as problematic. Dkt. 812 at 31. The district court then enjoined Apple with respect to *all* registered worldwide developers (literally millions) of apps on the App Store's United States storefront, and not just with respect to Epic, the only plaintiff here. *Id.* at 168; App. 65a.

Both parties appealed, and the Ninth Circuit stayed the injunction pending appeal. *Epic Games, Inc. v. Apple, Inc.*, Nos. 21-16506, 21-16696, 2021 WL 6755197, at *1 (9th Cir. Dec. 8, 2021). The Ninth Circuit affirmed in relevant part. App. 162a-63a. Both parties sought certiorari in this Court, and the Court denied review. *See Apple Inc. v. Epic Games, Inc.*, No. 23-344 (petition denied Jan. 16, 2024); *Epic Games, Inc. v. Apple Inc.*, No. 23-337 (petition denied Jan. 16, 2024).

**3.** The day this Court denied review, Apple filed a notice of compliance with the district court. App. 68a-69a; *see* Dkt. 871 (Notice of Compliance with UCL Injunction). Apple explained that it no longer prohibits developers from communicating with users via email or otherwise about alternative purchasing methods. Dkt. 871 at 1. Apple likewise eliminated the requirement—set forth in Section 3.1.1 of its developer guidelines—prohibiting developers from including "buttons, external links, or other calls to action" directing users to alternative purchasing mechanisms besides Apple's IAP. *Id.* These actions directly responded

to the district court's injunction against Apple's anti-steering rules. *Id.* at 2-3. As a result of these changes, Apple explained, developers can now communicate freely with users about alternative purchasing options. *Id.* at 15.

At the same time, to ensure that Apple can continue to receive compensation for use of its IP-protected tools, technologies, and services—the very things that attract developers and enable app creation—Apple implemented a commission between 12 and 27% on linked-out purchases, which are purchases made through external purchasing systems, as opposed to IAP. App. 69a; Dkt. 871 at 12. For example, if an app user wants to acquire a virtual costume (a "skin," in *Fortnite* parlance) for their virtual character, they can now do so using an external link to Epic's own purchasing system. But Epic cannot deliver that skin without the iPhone screen that displays it, the iPhone touch controls that direct the virtual character, the Apple silicon chip that processes all iOS software, the app development tools Epic used to build *Fortnite* for iOS, and the App Store platform that downloads, updates, and maintains the app. *See* Dkt. 812 at 147-50 (concluding that "Apple is entitled to license its intellectual property for a fee, and to guard its intellectual property from uncompensated use by others").

Epic moved to enforce the injunction, claiming that Apple's compliance plan fell short. App. 69a-70a; *see* Dkt. 897 (Mot. to Enforce Injunction). Epic did not dispute that Apple complied with the part of the district court's injunction that required Apple to allow developers to communicate with users via email and otherwise about alternative purchasing options. But Epic alleged that Apple violated

the injunction by charging a 27% commission on linked-out purchases, even though the injunction does not mention commissions at all. *See* App. 30a-32a, 44a n.9.

Rather than look to whether the plain text of the injunction either allows or disallows a commission—or considering whether to modify the injunction prospectively—the district court launched a six-day evidentiary hearing to probe Apple's decisionmaking and subjective intentions regarding its compliance with the injunction. *Id.* at 18a; *id.* at 60a, 69a-70a. Then, the court issued an order that, among other things, held Apple in civil contempt for failing to comply with the injunction and excoriated Apple for seeking to "evade the injunction's goals." *Id.* at 115a, 121a. As the district court saw it, although the injunction does not mention commissions or anything about Apple's compensation for linked-out purchases, Apple nevertheless violated the "spirit" of the injunction by charging, in the district court's view, too high a commission. *See id.* at 113a-19a, 23a. The district court then permanently barred Apple from "[i]mposing any commission or any fee on purchases that consumers make outside an app." *Id.* at 133a.

**4.** The Ninth Circuit affirmed in part, reversed in part, and remanded. App. 57a-58a. As for the civil contempt finding, the court acknowledged that "the text of the [i]njunction does not address commissions at all." *Id.* at 44a n.9. But, reaffirming existing circuit precedent, the court held that "[p]arties may be held in contempt for violating the spirit of an injunction." *Id.* at 24a. According to the Ninth Circuit, even though the injunction does not mention commissions, the injunction's "spirit" prevented Apple from charging what it called a "prohibitive commission." *Id.*

at 44a n.9 (emphasis omitted). The Ninth Circuit also agreed with the district court that Apple acted in contempt by imposing certain design restrictions on the kinds of "buttons" and "calls to action" developers may include in their apps, some of which it claimed violated the "letter" of the injunction and others the "spirit." *Id.* at 33a-35a. And the Ninth Circuit, like the district court, lambasted Apple for its supposed "bad faith" by charging a commission on linked-out purchases—findings that were tied to the premise that Apple had violated the spirit of the injunction. *Id.* at 25a-28a.

The Ninth Circuit reversed the district court's punitive zero-commission rule, but it left in place the contempt finding as to the commission and remanded for proceedings to determine what Apple's commission rate should be. *Id.* at 36a, 40a-44a. And although the parties neither briefed nor argued the issue, the Ninth Circuit announced in dicta certain suggestions for the district court, including 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.* at 45a. Apple requested that the Ninth Circuit reassign the case to a new judge given the district court's extensive discussion of Apple's supposed bad faith and reliance on Apple's privileged communications, but the Ninth Circuit denied that request. *Id.* at 57a.

Separately, the Ninth Circuit affirmed the universal scope of the injunction, which enjoins Apple's conduct with respect not only to Epic, but to all nonparty developers worldwide that distribute apps in the United States, including those who settled separate class action claims against Apple. *See id.* at 54a-57a. Although

Apple argued that this Court's decision in *CASA* prevents an injunction enjoining Apple's conduct with respect to nonparties, the Ninth Circuit reasoned "the scope of a permanent injunction following an incipient antitrust violation pursuant to" California's "UCL is . . . distinguishable from the injunction's scope in *CASA*." *Id.* at 56a (citing *Epic Games, Inc. v. Google LLC (In re Google Play Store Antitrust Litig.)*, 147 F.4th 917, 958 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 1051 (2026)). The court concluded that Apple could be enjoined not just with respect to Epic or with respect to developers that wish to link out to the Epic Games Store, but with respect to all developers, including those with no desire or intent to ever complete linked-out purchases through Epic's own payment processing system. *Id.* at 56a-57a. Instead of requiring Epic to prove that such an injunction was necessary to provide "complete relief" to Epic, the Ninth Circuit simply stated that it "agreed" with Epic's conclusory statements to that effect. *Id.* at 56a.

**5.** Apple moved for a stay of the issuance of the mandate pending Apple's forthcoming petition for a writ of certiorari, and the Ninth Circuit granted a stay. *Id.* at 4a. But after Epic objected, the Ninth Circuit then reversed its own stay order. *Id.* at 1a-3a. This time, the court reasoned that Apple "has not raised a substantial question for review" because this Court "previously denied certiorari on Apple's challenges to the injunction's scope," before this Court decided *CASA*, and because this Court "denied certiorari" 11 years ago "on the question whether courts may properly consider the 'spirit' of an injunction when imposing sanctions in contempt proceedings." *Id.* at 2a. As for Apple's immediate harms, the Ninth Circuit reasoned

that "Apple has failed to show good cause to sustain our prior stay order," because the remand proceedings would be the same even if this Court concluded that the contempt finding was invalid and the injunction overbroad. *Id.* at 3a.

**ARGUMENT**

Apple respectfully requests that this Court stay the mandate so that it may consider Apple's certiorari petition before any remand proceeds. "To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.*

Apple intends to raise two questions warranting this Court's review. First, whether premising civil contempt on the violation of a court order requires that the terms of the order clearly and unambiguously prohibit the conduct engaged in by the alleged contemnor, as the First, Second, Third, and Fifth Circuits hold; or instead, whether civil contempt may be premised upon the violation of an injunction's supposed spirit or purpose, even where the text of the injunction is silent as to the alleged conduct at issue, as the Ninth Circuit holds. And, second, whether the Ninth Circuit has properly created an "antitrust exception" to *CASA* and the longstanding equitable principles on which *CASA* rests, or otherwise disregarded *CASA*'s limits.

A stay is warranted. Alternatively, this Court should consider this application as a certiorari petition and grant review so that the important questions presented may be resolved as soon as possible. In all events, Apple respectfully requests that the Court enter an administrative stay while it considers this application.

## I. THIS COURT SHOULD GRANT A STAY OF THE MANDATE

### A. There Is A Reasonable Probability That The Court Will Grant Certiorari And Reverse The Decision Below

There is a reasonable probability that this Court will grant certiorari on both questions above. This Court grants certiorari to, among other things, settle "conflict[s]" between the courts of appeal, address decisions that have "so far departed from the accepted and usual course of judicial proceedings" as to warrant "an exercise of this Court's supervisory power," and review lower court decisions that decide "an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(a), (c). This case squarely implicates each of these bases for review, and the Ninth Circuit's erroneous holdings regarding the standard for civil contempt and the scope of the injunction warrant reversal.

#### 1. *The Ninth Circuit's Civil Contempt Holding Directly Conflicts With The Decisions Of Other Courts And Contravenes Bedrock Limits On The Contempt Power*

The first question—concerning the standard for when a civil contempt finding may be imposed—directly implicates a clear circuit split. The standard for imposing the serious sanction of civil contempt should not depend on geography.

**a.** The First, Second, Third, and Fifth Circuits confine the contempt inquiry to the four corners of the underlying order and require a court to find a violation of an order's clear text before imposing a civil contempt sanction.

The First Circuit, for example, holds that "[t]he test is whether the putative contemnor is 'able to ascertain from the four corners of the order precisely what acts are forbidden.'" *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 76 (1st Cir. 2002) (quoting *Gilday v. Dubois*, 124 F.3d 277, 282 (1st Cir. 1997)). This limits the contempt inquiry "to an examination of th[e] document's text." *Id.* The result is that civil contempt sanctions cannot be imposed in the First Circuit unless "the *language* of the relevant court order" bars the alleged contemnor's conduct; the "effectiveness" of the injunction is not at issue. *Id.* "The purpose" of the First Circuit's "'four corners' rule is to assist the potential contemnor by narrowly cabining the circumstances in which contempt may be found." *United States v. Saccoccia*, 433 F.3d 19, 28 (1st Cir. 2005). This requirement precludes finding contempt based on conduct as to which an order is silent: "The question is not whether the order is clearly worded as a general matter; instead, the 'clear and unambiguous' prong requires that the words of the court's order have clearly and unambiguously forbidden *the precise conduct on which the contempt allegation is based*." *Id.*

The Second Circuit likewise limits the contempt inquiry to an order's text, and not its spirit or purpose. As in the First Circuit, the Second Circuit has held that "the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden." *Drywall Tapers & Pointers of Greater New York v. Local*

*530 of Operative Plasterers & Cement Masons Int'l Ass'n*, 889 F.2d 389, 395 (2d Cir. 1989). Echoing the First Circuit's rule, the "order the contemnor failed to comply with" must "leave[] 'no uncertainty in the minds of those to whom it is addressed.'" *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995) (citation omitted).

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

The Third Circuit squarely rejects the notion that a violation of a decree's "spirit" alone is enough to sustain a contempt sanction. *Harris v. City of Philadelphia*, 47 F.3d 1342, 1352 (3d Cir. 1995). Like the First and Second Circuits, the Third Circuit stresses that "[s]pecificity in the terms of . . . decrees is a predicate to a finding of contempt." *Id.* at 1349. Characterizing this Court's precedents, the Third Circuit admonishes that "persons may not be placed at risk of contempt unless they have been given *specific notice* of the norm to which they must pattern their conduct." *Id.* (emphasis added). As a result, "the order which is said to have been violated must be specific and definite," such that the alleged contemnor must have had "certainty as to what it prohibited or directed." *Eavenson, Auchmuty & Greenwald v. Holtzman*, 775 F.2d 535, 544 (3d Cir. 1985) (citation omitted). As long as it is "*at least arguable*" that the contemnor's conduct did not violate a decree, contempt is inappropriate. *Harris*, 47 F.3d at 1357 (Alito, J., concurring in part and dissenting in part); *id.* at 1358 (contempt inappropriate where "provision is at least ambiguous"); *id.* at 1359 (order must be "specific and definite").

The Fifth Circuit, too, requires explicit notice before contempt is appropriate, and it applies that rule even where an alleged contemnor attempts to end-run a prior court order. In *Hornbeck Offshore Services, L.L.C. v. Salazar*, the district court enjoined enforcement of an offshore drilling moratorium imposed by the Department of the Interior. *See* 713 F.3d 787, 789 (5th Cir. 2013). The Department "immediately took steps to avoid the effect of the injunction" by introducing a new moratorium that was "the same 'in scope and substance'" as the enjoined moratorium. *Id.* at 789, 791.

But the Fifth Circuit nonetheless reversed the district court's civil contempt finding, concluding that "none of those actions violated the court's order." *Id.* at 789. "For Interior to have been in contempt," the Fifth Circuit explained, "the injunction would have had to include an *express* or *clearly inferrable* obligation." *Id.* at 793 (emphases added). Even crediting the district court's explanation that "Interior was intent on reinstating a moratorium that imposed the same limitations as" the earlier directive "from the moment the court enjoined it," *Hornbeck* held that "[n]either harboring that intent nor imposing a new moratorium . . . was a violation of the court order" itself. *Id.* at 794. Intent aside, the Department's "actions did not violate the injunction as drafted and reasonably interpreted." *Id.* at 795. "A more broadly worded injunction that explicitly prohibited the end-run taken by Interior would have set up issues more clearly supportive of contempt." *Id.*

**b.** In stark contrast, the Ninth Circuit has adopted an atextual approach to assessing civil contempt that permits a contempt finding when a court believes a party has violated the "spirit" of a court order, even where—as here—the order is silent as to the conduct upon which the contempt allegation is based. App. 24a. The Ninth Circuit's "spirit" standard directly conflicts with the text-based approach applied by other circuits, and that conflict is outcome determinative here as to whether Apple was properly held in contempt for charging a commission.

The Ninth Circuit started down its "spirit" path in *Institute of Cetacean Research v. Sea Shepherd Conservation Society (Sea Shepherd)*, 774 F.3d 935 (9th Cir. 2014). There, an order enjoined the defendants and "any party acting in concert

with them . . . from physically attacking" whaling vessels or from coming within "500 yards" of such ships "on the open sea." *Id.* at 941 (quoting injunction). After receiving a copy of the injunction, the defendants blatantly evaded it by transferring corporate assets and ownership, so as to allow a (technically) different entity to engage in the precise proscribed conduct. *See id.* at 941-42. The Ninth Circuit held that the defendants could be "held liable for aiding and abetting others to violate the injunction," and premised a civil contempt finding on that basis. *Id.* at 944. As *Sea Shepherd* reasoned, "[i]n deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree *in a violation of the spirit of the injunction*, even though its strict letter may not have been disregarded." *Id.* at 949 (emphasis added) (citation omitted).

In this case, the Ninth Circuit doubled down on, and indeed greatly expanded, *Sea Shepherd*'s "spirit" rule in a case that has nothing to do with aiding and abetting. The Ninth Circuit began its contempt analysis with a heading and lengthy discussion titled, "The Injunction's Spirit" and bluntly stated that "*Sea Shepherd* means what it says: parties may be held in contempt for violating the spirit of an injunction." App. 22a, 24a. And while *Sea Shepherd* grounded its invocation of "spirit" to police the contemnor's "acts of assistance," 774 F.3d at 949, making that case an "aiding and abetting case," App. 23a, the Ninth Circuit here fully embraced its "spirit" analysis outside the "aiding and abetting" context, *see id.* at 24a.

The Ninth Circuit's super-charged "spirit" rule directly conflicts with the approach adopted by the First, Second, Third, and Fifth Circuits. When it came to

analyzing whether Apple's commission on linked-out purchases violated the injunction, the panel did not even attempt to find within the "four corners" of the injunction a clear command that Apple may not charge a commission. To the contrary, the Ninth Circuit expressly acknowledged that "the *text* of the [i]njunction does not address commissions at all." *Id.* at 44a n.9 (emphasis added). Yet, the Ninth Circuit found that Apple violated the injunction's "spirit" by charging too *high* a commission, and thus Apple was properly held in contempt because its commission had a "prohibitive effect," insofar as it "*burden[ed]*" developers that sought to include links to out-of-app purchases. *See id.* at 30a-31a, 44a n.9 (emphasis added).

The Ninth Circuit observed that the injunction used "the key word 'prohibit,' which can be interpreted to mean '[t]o prevent, preclude, or severely hinder.'" *Id.* at 30a (alteration in original) (citation omitted). But the court overlooked the context in which that word was used. The injunction was specific about *what* was prohibited, stating that Apple may not "prohibit[] developers *from . . . including in their apps and their metadata buttons, external links, or other calls to action that direct customers to [external] purchasing mechanisms*." App. 230a (emphasis added). That prohibition did not mention commissions, much less clearly and unambiguously prohibit Apple from charging a commission—or, indeed, clearly specify whether any particular commission would violate the injunction—as would be required in other circuits. *See Saccoccia*, 433 F.3d at 28 (holding that it must be clear and unambiguous that the injunction prohibits "*the precise conduct*" on which contempt is based); *Perez*, 347 F.3d

at 424 (holding that court's order must be "'clear and unambiguous' with reference to the conduct in question").

It is clear that, in the First, Second, Third, and Fifth Circuits, Apple could not have been held in contempt for charging a commission based on an injunction that did not mention commissions at all. The only way to reach commissions is to harness the breadth and uncertainty of the Ninth Circuit's outlier "spirit" rule.

**c.** There is a fair prospect that this Court will reverse. Contempt is a serious sanction that not only subjects a litigant to opprobrium but can also carry with it severe monetary or other sanctions. As this Court has long recognized, civil contempt "uniquely is 'liable to abuse.'" *International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994). Judicial contempt "is a potent weapon," and when "it is founded upon a decree too vague to be understood, it can be a deadly one." *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). "Unlike most areas of law, where a legislature defines both the sanctionable conduct and the penalty to be imposed, civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Bagwell*, 512 U.S. at 831. So, as this Court put it in *Taggart v. Lorenzen*, contempt is inappropriate where there is a "*fair ground of doubt*" as to the legality of a party's conduct. 587 U.S. 554, 557 (2019). These principles require that parties be given clear notice of what conduct they may (or may not) engage in. An open-ended, "spirit"-based inquiry is the opposite of clear notice.

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

It is true, of course, that an injunction's terms can be understood "in the light of the issues and the purpose for which the suit was brought." *Terminal R.R. Ass'n of St. Louis v. United States*, 266 U.S. 17, 29 (1924). But that does not mean that a court assessing civil contempt may hold a party liable for what it deems, after the fact, to be the "spirit" of the order. Such a post-hoc, know-it-when-you-see-it inquiry is the antithesis of providing clear notice. *See Saccoccia*, 433 F.3d at 28 (requiring notice of the "*precise conduct*" allowed). Nor does this Court's decision in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949), support the Ninth Circuit's spirit-based approach. *Contra* App. 31a, 35a n.5. That case involved a violation of an injunction's express "terms." *McComb*, 336 U.S. at 192. This Court found that the injunction in *McComb*, "[b]y its terms," "enjoined any practices which were violations" of the Fair Labor Standards Act, and cited the respondent's violations of the Act in holding it in contempt. *Id.* *McComb* thus lends no support to the Ninth Circuit's free-floating "spirit" standard, which divorces the contempt inquiry from the injunction's text.

Of course, nothing prohibits a district court from modifying and enlarging an injunction if new circumstances arise or it becomes clear that an existing order is insufficient to remedy a violation. But a prospective modification of an order that gives a party clear notice going forward is a far cry from a contempt sanction for violating the "spirit" of an order that never mentions the particular conduct at issue. A modification, moreover, is not a punishment and entails "full litigation" concerning whether any proposed "additional relief" is "desirable to prevent the evils aimed at." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). Here, as the Ninth Circuit stressed, the only harm found by the district court was an *informational* harm—"'preventing informed choice among users of the iOS platform.'" App. 39a n.8 (quotation omitted). That is not obviously connected to commissions. Moreover, before an injunction may be modified, a party must have "[t]he opportunity to present reasons . . . why proposed action should not be taken." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985); *see* Fed. R. Civ. P. 65 (requiring notice). And a district court may not impose a modification retroactively simply by attaching a "modification" label to a civil contempt proceeding. *See FTC v. Trudeau*, 579 F.3d 754, 778 (7th Cir. 2009) (declining to treat a civil contempt order "as a *sua sponte* modification" of the court's prior decree).

Nor can the district court's contempt finding be sustained on account of Apple's supposed "bad faith." App. 25a. The Ninth Circuit recounted the district court's conclusions that Apple "attempted to mislead" the court in its notice of compliance, and that, at "every step . . . Apple chose to maintain" its revenue. *Id.* at 27a (citations

omitted). The panel also emphasized that, in the district court's view, Apple "*willfully* violated the Injunction." *Id.* at 28a (citation omitted). Apple strenuously disagrees with the district court's findings that it acted in bad faith; faced with a vexing issue that could alter the app market, Apple tried carefully to comply with the injunction while honoring its fiduciary duties in running a business. But the district court's bad faith analysis was driven by its improper focus on the "spirit," rather than unambiguous terms of the order. This only underscores the need for an objective, text-based standard for contempt, so that parties are given clear notice of what is, and what is not, proscribed by a court order. *E.g.*, *Hornbeck*, 713 F.3d at 794-95.

**d.** The district court's contempt finding based on commissions is enormously important given its economic consequences and plainly wrong since the original order did not mention commissions at all. It alone warrants review. But the Ninth Circuit's contempt finding as to the other supposed violations of the injunction also cannot stand under the clear-and-unambiguous standard applied by other circuits. According to the Ninth Circuit, Apple did not follow the injunction's commands to allow developers to include "buttons," nor did it permit "other calls to action." App. 33a-34a. But while the order mentioned "buttons," it did not specify that Apple was required to use only a *particular type* of "button," as the district court found in holding Apple in contempt. Apple allowed developers to use what Apple has long called its "plain button" style in its developer guidelines, and Apple allowed developers to use particular templates for directing users to outside purchasing

options. *Id.* At a minimum, it was far from clear and unambiguous that Apple's design restrictions on particular *types* of buttons or templates violated the injunction.

In any event, the civil contempt sanction *as to the commission* is at the heart of this case and the only issue on remand. If Apple did not act in contempt by imposing a commission (as would be true in the circuits that stick to the four corners of orders in weighing contempt), there is no basis for either the district court or the Ninth Circuit to police Apple's commission rate using the civil contempt power.[2]

### 2. *The Ninth Circuit's Universal Injunction Ruling Flouts Equitable Relief Limits Recognized In* Trump v. CASA

The Ninth Circuit's ruling upholding the district court's universal injunction also warrants review. In *Trump v. CASA*, this Court clarified the limits on a federal court's authority to issue relief as to nonparties. A federal court may enjoin conduct only with respect to "the plaintiffs in [a] lawsuit." *CASA*, 606 U.S. at 837. Although a court may award a plaintiff "complete relief," such relief "is not synonymous with 'universal relief.'" *Id.* at 851. "Complete relief" instead refers only to relief "'*between the parties*.'" *Id.* (emphasis added) (quoting *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928) (emphasis added)). And *CASA* articulated important limits on the complete-relief principle: "Complete relief is not a guarantee" but is instead "the *maximum* a court can provide." *Id.* at 854 (emphasis added). As CASA holds, "'the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story

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

needs to be.'" *Id.* (quoting Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1797 (2022)). The Ninth Circuit's decision flouts those fundamental principles and effectively renders *CASA* a dead letter.

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

First, while *CASA* makes clear that equitable relief ordinarily is available only "*between the parties*," 606 U.S. at 851 (citation omitted), the Ninth Circuit's injunction extends beyond Epic—the only plaintiff in this case—to all developers, of which there are literally millions. The injunction effectively affords Epic class-wide relief to the broadest possible class—*all* registered worldwide developers with apps on the App Store's U.S. storefront. But Epic did not seek to maintain a class action, much less satisfy Rule 23. Making matters worse, the *Cameron* plaintiffs—who, like Epic, challenged Apple's app distribution policies—reached a court-approved settlement ordering no change to Apple's anti-steering rules. By extending its injunction to *all* developers, the district court afforded the *Cameron* class members relief they neither sought nor obtained. *See Taylor v. Sturgell*, 553 U.S. 880, 901 (2008) (warning against the creation of "'*de facto* class actions'" where the "procedural protections prescribed in . . . Rule 23" are absent (citation omitted)).

Second, although *CASA* indicates that an injunction may incidentally benefit nonparties when necessary to grant complete relief to the plaintiff, the Ninth Circuit

failed to explain why extending the injunction to all developers was necessary to afford complete relief to Epic. Such a universal injunction is plainly not necessary to achieve that result and provides Epic far *more* than complete relief. In the prior appeal, the Ninth Circuit reasoned that "the district court did not abuse its discretion when setting the scope of the injunctive relief" to reach all developers because the injunction was "tied to Epic's injuries" as a *distributor* via the Epic Games Store—rather than as a *developer*—of mobile apps. *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 1003 (9th Cir. 2023). Specifically, the court reasoned that the anti-steering provision in Apple's developer guidelines "prevent[ed] other apps' users from becoming would-be *Epic Games Store* consumers." *Id.* (emphasis added). That is, the guidelines prevented developers from using the Epic Games Store. *See also Epic Games, Inc. v. Apple, Inc.*, 73 F.4th 785, 787 (9th Cir. 2023) (M. Smith, J., concurring in the granting of the motion for a stay of the mandate pending the filing of a petition for certiorari) (reasoning that a universal injunction was justified "to fully remedy the harm Epic suffers in its role as a competing games *distributor*" (emphasis added)).

As Apple explained, however, even assuming that Epic benefits as an app *distributor* when other apps' users make purchases via the Epic Games Store, that in no way justifies enjoining Apple with respect to developers that do not seek to link out *to the Epic Games Store*. *See* App. 55a-56a. For instance, if Spotify includes a link to Spotify's own external payment processing system in its iOS app, that in no way benefits *Epic*. Spotify's external link-out in fact has nothing to do with Epic. The same is true when Microsoft implements link-outs to the Microsoft Games Store.

Providing relief to nonparty Microsoft by requiring Apple to allow developers to link out to the Microsoft Games Store can only *hurt* Epic. There is no basis for enjoining Apple's conduct with respect to even those developers that do not wish to link out to the Epic Games Store, and the injunction therefore goes far beyond providing Epic the "maximum" remedy of complete relief. *CASA*, 606 U.S. at 854. This distinction has huge practical implications because, as noted, the only evidence in the record suggests that only about 100 developers used the Epic Games Store at the time of trial. Yet the injunction applies to *millions* of developers worldwide that distribute apps on the App Store's U.S. storefront.

Third, the Ninth Circuit disregarded *CASA*'s teachings that "[c]omplete relief is not a guarantee" but is instead "the *maximum* a court can provide," and that "'the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be.'" *Id.* at 853-54 (citation omitted) (emphasis added). The Ninth Circuit did not hold Epic to that standard. Instead, the court simply parroted Epic's argument—devoid of any record citation or support—that "limiting" the scope of the injunction to "only gaming apps that seek to implement links out to the Epic Games Store . . . would not facilitate the competition necessary to grant Epic complete relief." App. 55a-56a. And without offering any reasoning, the Ninth Circuit rubber-stamped that argument, stating that it "agree[d] with Epic on this question." *Id.* at 56a. That conclusory analysis renders *CASA*'s limits meaningless.

**b.** The Ninth Circuit made matters worse by entrenching a newly created "antitrust exception" to *CASA*. In refusing to follow *CASA*, the Ninth Circuit

reasoned that *CASA*'s equitable limits apply differently when it comes to "the scope of a permanent injunction following an incipient antitrust violation pursuant to the UCL." *Id.* The court drew that exception from the Ninth Circuit's holding in a different case that "*CASA*'s holding about district courts' authority under the Judiciary Act of 1789 has no bearing on whether [a] district court . . . exceed[s] its equitable powers under Section 16 of the Clayton Act." *Id.* (quoting *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 958 (9th Cir. 2025)).

There is no basis for the Ninth Circuit's purported antitrust exception to *CASA*. *CASA* explained that "[t]he Judiciary Act of 1789 . . . 'is what authorizes federal courts to issue equitable remedies,'" and that "statutory grant encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." 606 U.S. at 841 (citations omitted). Section 16 of the Clayton Act does not purport to depart from "traditional principles of equity," *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 130 (1969), and instead allows private parties to obtain relief "when and under the same conditions and principles as injunctive relief . . . granted by courts of equity, under the rules governing such proceedings," 15 U.S.C. § 26. *See also Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 644 (1977) (Blackmun, J., concurring in the result) (reasoning that Section 16 injunctions must hew to "all the traditional prerequisites for equitable relief"). The Ninth Circuit's antitrust exception to *CASA* is, therefore, entirely unfounded.

But the decision here is even more extreme. The district court did not find a violation of any federal antitrust law. To the contrary, as the Ninth Circuit itself

recognized, "there is no antitrust liability" here. App. 56a. So the panel extended *Google*'s errant reasoning to cases involving what it called "incipient" antitrust violations—under *state law* (i.e., California's UCL) no less. *Id.* That is doubly wrong. First, as noted, private antitrust remedies are subject to the same equitable limits as apply in other cases. Second, state law cannot expand a federal court's equitable authority. "Equitable relief in a federal court" is limited by "the traditional scope of equity as historically evolved in the English Court of Chancery," and the fact that "a State may authorize its courts to give equitable relief unhampered by any or all such restrictions cannot remove these fetters from the federal courts." *Guaranty Tr. Co. of N.Y. v. York*, 326 U.S. 99, 105-06 (1945).

The Ninth Circuit's egregious misapplication of *CASA* warrants this Court's immediate correction. Left undisturbed, the Ninth Circuit's opinion in this case, coupled with its erroneous analysis in *Google*, threatens to reincarnate the universal injunction in the nation's largest circuit, creating a magnet for forum shopping.

#### 3. *The Ninth Circuit's Analysis Denying Apple A Stay After Initially Granting One Is Not Persuasive*

The Ninth Circuit initially recognized—correctly—that Apple raises substantial questions warranting this Court's review by granting Apple a stay of the mandate. App. 4a. But then the Ninth Circuit reversed itself on the stay issue, reasoning that Apple has not shown a reasonable probability of certiorari nor a fair prospect of reversal because this Court (1) "previously denied certiorari on Apple's challenges to the injunction's scope" and (2) "has also denied certiorari on the question

whether courts may properly consider the 'spirit' of an injunction when imposing sanctions in contempt proceedings." *Id.* at 2a.

Neither reason holds up. This Court, it is true, declined to review the scope of the injunction in *Apple Inc. v. Epic Games, Inc.*, 144 S. Ct. 682 (2024), and declined certiorari in *Sea Shepherd Conservation Society v. Institute of Cetacean Research*, 576 U.S. 1005 (2015). But neither denial is at all probative in assessing the cert-worthiness of the issues here. As for the scope of the injunction, the denial of Apple's petition *before* this Court's decision in *CASA*, and before the Ninth Circuit invented its antitrust exception to *CASA*, says nothing about whether certiorari is now warranted to review the Ninth Circuit's decision below.

Nor does this Court's denial of certiorari in *Sea Shepherd* in any way undermine the case for certiorari on the contempt standard today. That petition was focused on a different issue—whether "the Alien Tort Statute provides jurisdiction for an extraterritorial injunction regulating otherwise legal behavior on the high seas." *See* Petition for Certiorari at i, *Sea Shepherd Conservation Society v. The Institute of Cetacean Research*, No. 14-1300 (filed Apr. 28, 2015). It raised the contempt issue only as a throw-away, second question that petitioner did not discuss until page 34 of a 40-page petition, and even then, the petition devoted just five full pages to the issue. Moreover, because *Sea Shepherd* was an "aiding and abetting" case, it did not employ the "spirit" analysis in the extreme manner that the Ninth Circuit did here. And, of course, this Court regularly grants certiorari to address questions it has previously denied for one reason or another.

The Ninth Circuit also erred by claiming, without any reasoning, that this case does not "implicate[] a circuit split" on the question whether "courts may properly consider the 'spirit' of an injunction." App. 2a-3a. This case directly implicates the conflict over the proper contempt standard. As explained above, the Ninth Circuit repeatedly invoked the "spirit" of the injunction in this case, squarely holding that Apple could be held in civil contempt for violating just that. *Id.* at 24a; *see also id.* at 44a n.9 (holding Apple in contempt for violating the injunction's "spirit" even though its "text" said nothing "at all" about commissions). Yet, as explained, in numerous other circuits, the contempt analysis is limited to the four corners of the injunction. That conflict is not only squarely implicated, it is outcome determinative here.

The Ninth Circuit's reversal on the stay, coupled with the flawed reasoning in its order, makes this an especially strong case for a stay from this Court.

### B. Apple Faces Irreparable Harm Absent A Stay

In many if not most emergency applications, a party seeks to stay enforcement of a law or an injunction issued by a lower court. Apple's request is far more modest. The underlying injunction in this case remains, and will remain, in force. A stay is needed simply to preserve the status quo pending Apple's certiorari petition to avoid multiple irreparable harms that would flow from forcing Apple to proceed before the district court on a matter of critical importance, all while under the taint of the district court's erroneous civil contempt findings and its universal injunction.

#### 1. *Apple Faces Irreparable Harm If The Mandate Issues Now*

Apple faces multiple, potential irreparable harms if the district court proceeds with remand proceedings before this Court addresses whether and to what extent

those proceedings are appropriate to begin with by evaluating the district court's assessment of contempt and the appropriate scope of injunctive relief.

**a.** The first, and most obvious, is the harm of having to litigate the allowable commission under the highly prejudicial taint of an improper contempt finding. No one questions the importance of the contempt power when properly exercised. But this Court has recognized for well over a century that contempt is "liable to abuse." *In re Terry*, 128 U.S. 289, 313 (1888). Because judicial contempt can be wielded as a "deadly" weapon, "the fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension." *Philadelphia Marine*, 389 U.S. at 76. These concerns are particularly potent because "[c]ontumacy 'often strikes at the most vulnerable and human qualities of a judge's temperament,' and [contempt's] fusion of legislative, executive, and judicial powers 'summons forth . . . the prospect of the "most tyrannical licentiousness."'" *Bagwell*, 512 U.S. at 831 (alteration in original) (citations omitted).

These concerns are true not only when a court finds a party in contempt but also when it proceeds to implement a contempt sanction. That is because a finding of civil contempt stamps the contemnor with "stigma." *Reich v. Sea Sprite Boat Co.*, 64 F.3d 332, 334 (7th Cir. 1995) (Easterbrook, J.); *see also, e.g.*, *United States v. Wendy*, 575 F.2d 1025, 1030 (2d Cir. 1978) ("A [contempt] citation is likely to afflict the contemnor with a 'stigma of antisocial conduct.'" (citation omitted)); *Scott v. Clarke*, 852 F. App'x 727, 730 n.3 (4th Cir. 2021) (similar); *In re Contempt Finding in U.S. v. Stevens*, 663 F.3d 1270, 1278 (D.C. Cir. 2011) (Edwards, J., concurring)

(similar). The Ninth Circuit suggested that, on remand, the district court could either make the contempt sanction purgeable or modify the injunction instead of imposing a civil contempt sanction. App. 44a. But either way, Apple would be forced to proceed on the critical commission issue under the erroneous stamp, and stigma, of being a contemnor on that very issue. That harm is irreparable.

Contempt threatens "deadly" consequences. *Philadelphia Marine*, 389 U.S. at 76. It is fundamentally unjust to require Apple to undergo high-stakes remand proceedings to determine a core facet of its business model under the false auspices that it acted in contempt by charging a commission. The Ninth Circuit has already expressly made the contempt finding relevant on remand, instructing the district court to consider whether to alter the injunction to impose "a purgeable civil contempt sanction." App. 44a-45a, 58a. That instruction assumes, of course, that Apple is actively in civil contempt and forces Apple to litigate its commission rate from a position of having committed wrongdoing. Moreover, the taint of proceeding under a "contempt" label cannot realistically be undone or unwound by a subsequent finding that the contempt label was improper. Apple should be free to litigate any further issues concerning its commission "free from the stigma the label 'contemnor' carries." *Sea Sprite*, 64 F.3d at 334. The threat of this irreparable harm alone warrants a stay.

**b.** The injunction's universal scope and the international attention on this case confirm that if the district court orders a new commission rate before this Court can decide whether remand proceedings are warranted, the rate will be difficult to unwind and will reshape Apple's business and even the global app market in the

meantime. *See NCAA v. Board of Regents of the Univ. of Okla.*, 463 U.S. 1311, 1313-14 (1983) (White, J., in chambers) (granting a stay where failing to do so could produce structural business changes); *FTC v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019) ("The fundamental business changes that the injunction imposes cannot be easily undone should Qualcomm prevail on appeal.").

Regulators around the world are looking to this case to determine the commission rate Apple should be permitted to charge in other countries.[3] *See* Dkt. 812 at 91 (concluding that "the relevant geographic market" is "global" because Apple "treats app distribution" as a "global enterprise," with "rules and guidelines [that] apply globally to all storefronts"). The result is that, even if Apple could appeal whatever commission rate the district court sets on remand, that rate may be practically difficult—if not impossible—to change in the other jurisdictions that are closely monitoring these proceedings. *See Qualcomm*, 935 F.3d at 756. What is more, because the district court's injunction wrongly extends relief to all developers, the stakes here are enormous. If the injunction were limited to Epic, the remand proceedings would be exponentially simplified because evidence concerning Apple's

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[3] *See, e.g.*, Simon Thomsen, *The competition watchdog just got a seat at the table in the Epic Games compensation battle with Apple*, startupdaily (Apr. 21, 2026), https://www.startupdaily.net/topic/global-tech/the-competition-watchdog-just-got-a-seat-at-the-table-in-the-legal-battle-between-epic-games-and-apple/ (recounting that Australia's competition regulator stated that "the orders made in these proceedings could have wide-ranging implications for the distribution of mobile apps and in-app payments in Australia"); Sharon Driscoll, Stanford Institute for Economic Policy Research, *Q&A: What's at stake in the Epic Games v. Apple case* (May 11, 2021), https://siepr.stanford.edu/news/qa-whats-stake-epic-games-vs-apple-case (interview with law professor Mark Lemley, stating that "[a]ntitrust agencies around the world" are following cases like this one).

interactions with millions of other app developers—ranging from small players to titans like Epic—would be irrelevant. These considerations underscore why this Court's review is needed *before* the Ninth Circuit's mandate is carried out, and why allowing the remand to proceed now may irreparably harm Apple.

These concerns are amplified by Epic's own position that the Ninth Circuit's decision would limit Apple to a de minimis commission on linked-out purchases. In an interview given just hours after the Ninth Circuit ruled, Epic's CEO explained that he "can't imagine any justification for a percentage of developer revenue being assessed here." Jay Peters, *Tim Sweeney on the future of Fortnite after another win over Apple*, The Verge (Dec. 11, 2025), https://www.theverge.com/news/843265/apple-epic-games-tim-sweeney-interview. Not only would adopting that extreme position deprive Apple of any fair return on the massive value it provides developers by creating an unprecedented platform that attracts users from around the world, it would wrongly charge a federal court with setting rates in the global app market. None of that should happen, ever. *See NCAA v. Alston*, 594 U.S. 69, 103 (2021) ("[J]udges make for poor 'central planners' and should never aspire to the role." (citation omitted)). But at a minimum, this Court should review the important questions presented first, before any such remand is allowed to proceed.

**c.** If forced to litigate an appropriate commission under the decision below, Apple may also be forced to divulge valuable information that could harm its business and strengthen its competitors. Numerous courts credit the disclosure of "private, confidential information" as a "'quintessential type of irreparable harm.'" *Airbnb,*

*Inc. v. City of New York*, 373 F. Supp. 3d 467, 499 (S.D.N.Y. 2019) (Engelmayer, J.) (citation omitted); *see also, e.g.*, *Robert Half Int'l Inc. v. Billingham*, 315 F. Supp. 3d 419, 433 (D.D.C. 2018) (Mehta, J.) ("Courts in this District have recognized that the disclosure of confidential information is, by its very nature, irreparable 'because such information, once disclosed, loses its confidential nature.'" (citation omitted)). This Court, too, has emphasized harms based on a stay applicant being put "at a 'competitive disadvantage.'" *Ohio v. EPA*, 603 U.S. 279, 291 (2024) (citation omitted); *see also Billingham*, 315 F. Supp. 3d at 433-34 (recognizing that "los[ing] a competitive advantage over competitors" is irreparable).

In its initial civil contempt inquiry, the district court required Apple to turn over reams of confidential business data regarding the company's decisionmaking concerning the App Store, its implementation of linked-out purchases for developers, and its internal discussions regarding compliance with the injunction. *See* App. 72a-103a (documenting in vivid detail Apple's internal deliberations, meeting notes, and comments and statements by company executives). The Ninth Circuit recognized that the documents and discussions revealed Apple's "consideration of how the company could offer linked-out purchases without losing revenue," *id.* at 29a, and Apple's analysis of "how various compliance options would affect its revenue," *id.* at 30a. The district court's demand for these documents was the product of its erroneous view that Apple had acted in contempt by charging a commission.[4]

[4] Apple asserted attorney-client privilege with respect to many of these documents because of lawyers' involvement in discussions of how to comply with the

Allowing the case to now proceed on remand under the false premise that Apple acted in contempt may invite similar inquiries. Staying the remand proceedings until this Court can review the erroneous contempt finding would eliminate the risk of irreparable harm stemming from the compelled disclosure of confidential, high-level business secrets regarding Apple's decisionmaking about a core part of its business, which, once disclosed, cannot be *un*disclosed and would invite a "competitive disadvantage," *Ohio*, 603 U.S. at 291 (citation omitted).

### 2. *The Ninth Circuit's Stay Analysis Is Unpersuasive*

In its reconsideration order denying Apple a stay, the Ninth Circuit dismissed Apple's irreparable harm arguments in just one sentence, reasoning that, "[e]ven if [this] Court agrees with Apple's arguments, there would still be further proceedings on remand, particularly on the question of commission, and those proceedings are likely to look similar, if not the same, regardless of certiorari." App. 3a.

That is obviously incorrect. Because it upheld the district court's civil contempt finding, the Ninth Circuit contemplated further proceedings to impose either "a purgeable civil contempt sanction" or a "modification of the Injunction" in light of Apple's contempt. *Id.* at 44a. But if this Court reverses the contempt finding, there is no justification for *any* "remand proceeding," let alone a proceeding that looks "similar" to this one. *Id.* at 3a. Reversing the civil contempt finding would, of course, negate the district court's consideration of a new civil contempt sanction. Moreover, if the contempt finding were reversed, the district court also would be under no

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district court's original injunction. But both the district court and the Ninth Circuit rebuffed Apple's assertion of privilege. App. 28a-30a.

obligation to consider a modification of the injunction, and no modification would be needed if Apple proposed an acceptable commission on its own. Furthermore, even if a modification proceeding were initiated, a reversal of the contempt finding would mean that Apple could proceed freed from the taint and stigma of civil contempt in that proceeding, *see Sea Sprite*, 64 F.3d at 334, and able to focus attention on the purely "informational harm" underlying the sole UCL violation, App. 44a n.9. Any modification proceeding would also, of course, look far different if this Court first enforces *CASA*'s limits and requires that injunctive relief remedy harms only to Epic, and not to millions of other nonparty app developers.

Epic has pounded the drumbeat of contempt ever since the district court made its erroneous contempt finding, and as is evidenced by the district court's and Ninth Circuit's decisions—the contempt label has had a potent effect on this case. It would be highly prejudicial to force Apple to proceed on remand before this Court has an opportunity to review the important questions presented here.

### C. The Balance Of The Equities Strongly Favors A Stay

Balancing the equities strongly favors a stay. The district court's new injunction following its civil contempt finding prohibits Apple from charging any commission on any linked-out purchases for any developer, App. 133a, and that order remains operative. As the Ninth Circuit held, "Apple should not be able to charge any commission for linked-out purchases until such time as the district court has approved an appropriate fee." *Id.* at 46a. As a result, Epic faces no harm at all from a stay of the mandate—indeed, it will continue to enjoy the windfall of Apple charging no commission on linked-out purchases. If anything, staying the mandate will only

delay Apple's ability to resume charging a commission. Yet, for Apple, this is an economic harm it is willing to incur to avoid the irreparable, long-term harms that would follow from being required to litigate the commission issue on remand under the false auspices of being labeled a contemnor.

Epic argued below that "a stay would prolong the harm to Epic and to consumers because the vast majority of developers are reluctant to make the investment necessary to implement steering links in their apps before there is certainty on the commission structure that Apple may charge on linked-out transactions." ECF 189 at 1-2 (Mot. to Reconsider). That argument is wrong. Epic concedes that Apple currently charges Epic no commission at all on linked-out purchases, nor does it charge a commission on such purchases with respect to any other developer. And Epic offers nothing to show that developers are hesitating to implement external links to other purchasing methods while Apple's rate remains fixed at zero, let alone that "uncertainty" is an issue. In any event, prolonging this Court's review of the important questions presented would simply extend the "uncertainty" that Epic supposedly fears. So, if anything, Epic's argument just counsels in favor of this Court's intervention now.

The public interest also favors a stay. It is impossible to overstate the stakes of this case, which implicates the massive global app economy. Even Epic has emphasized "the unique importance of this particular case," claiming that it concerns "hundreds of thousands of developers and one billion consumers," in a market that "produces $100 billion in revenue, every year." *Epic* Petition for Certiorari 27, *Epic*

*Games, Inc. v. Apple Inc.*, No. 23-337 (filed Sept. 27, 2023). The gigantic economic stakes of this case counsel in favor of a stay so that this Court can review the questions presented before any proceeding on a commission.

Balancing the equities therefore strongly favors taking the modest step of issuing a stay to preserve the status quo so that this Court can decide the important questions presented before any proceeding on a commission is conducted.

## II. ALTERNATIVELY, THE COURT SHOULD TREAT THIS APPLICATION AS A PETITION FOR CERTIORARI AND GRANT IT

If this Court concludes that a stay is not warranted, it should treat this application as a petition for certiorari and grant review. Because of the Ninth Circuit's delay in resolving Apple's stay motion, it effectively deprived Apple of any possibility of filing an expedited petition for certiorari that could have been considered by this Court before its summer recess—an alternative Epic itself floated. *See* ECF 189 at 2. Even if this Court does not grant a stay, it should grant certiorari now so that this case may be set for argument as early as possible next fall and decided in due course. At a minimum, the Court's resolution of the important questions presented at the earliest practical juncture will materially assist the resolution of this important case and trigger any necessary corrective action by the lower courts as soon as possible. Particularly given Epic's attempt to use this case to remake the global app market, prompt consideration is warranted.

## III. THIS COURT SHOULD ISSUE AN ADMINISTRATIVE STAY TO ALLOW IT TO FULLY CONSIDER THE APPLICATION

Finally, the Court should grant a brief administrative stay. As the discussion above makes clear, this application presents substantial and important legal issues

for the Court. Apple has expeditiously filed this application just days after the Ninth Circuit reconsidered its initial order granting a stay, and Apple faces imminent irreparable harms. An administrative stay would not harm anyone—it would simply preserve the status quo and pause the remand proceedings, while giving this Court breathing room to consider this application on a schedule of its choosing.

## CONCLUSION

This Court should stay the issuance of the mandate until it disposes of Apple's forthcoming petition for certiorari. In the alternative, this Court could treat this application as a petition for certiorari and grant the petition. If the Ninth Circuit issues the mandate while this application remains pending, Apple requests that the Court recall the mandate. And, in all events, Apple respectfully requests an administrative stay while the Court considers this application for interim relief.

Respectfully submitted,

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