

No. 26A194 (25-1311)

In the
Supreme Court of the United States

APPLE INC.,

Applicant,

v.

EPIC GAMES, INC.,

Respondent.

**REPLY OF APPLE INC. IN SUPPORT OF REQUEST TO STAY LOWER-
COURT PROCEEDINGS PENDING THIS COURT'S DECISION
ON THE CONTEMPT ISSUE**

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INTRODUCTION

Apple’s request for a stay rests on a basic proposition: there is no reason for the district court to go forward with a remand proceeding under the rubric of a Ninth Circuit decision resting on a contempt finding that this Court has agreed to review. If this Court reverses on the contempt issue, that would obviate the need for *any* remand proceeding, because the Ninth Circuit’s remand order explicitly ties—and thus limits—the remand to amending the district court’s contempt order (i.e., the April 30 Order), and because both “avenues” on remand are stated as means to “resolve [the district court’s] error” in fashioning the remedy for its contempt finding. Pet. App. 33a-35a, 49a. Even if this Court’s decision would not completely obviate the need for a remand, this Court’s opinion will almost certainly alter the legal framework governing any further proceedings. Moreover, there is no basis for requiring Apple to undergo any further proceedings under the prejudicial label of a contemnor, when this Court has agreed to decide whether the Ninth Circuit correctly upheld the contempt finding to begin with.

The balance of harms likewise weighs strongly in favor of a stay. Despite Epic’s say-so, it does not face any harm in the interim: Apple is currently charging no commission on link-out purchases, and that will not change while the Court considers this case. For this reason, Apple is not “frustrat[ing]” the existing injunction (Dkt. 1706 at 2 (Appl. App. 1)); it is *complying* with it. At the same time, Apple faces a series of immediate and irreparable harms. Just having to litigate the crucial question of what commission it can charge under the incorrect and prejudicial label of contemnor is irreparable. In addition, if the remand proceedings go forward, Apple

may be required to disclose sensitive business information that could have global implications for Apple’s business. Epic quibbles with whether these harms are irreparable, but they are real—and subjecting Apple to them while this Court decides the issue at the heart of this case is wholly unnecessary.

Epic has no coherent theory as to why any of this makes sense. And it does not. This Court should stay the district court remand proceedings while this Court decides the threshold question whether the district court properly held Apple in civil contempt. As Epic itself argued below, everything flows from that determination.

ARGUMENT

Epic’s opposition to an administrative stay makes three primary points. Each is incorrect. Because those points bear on the stay question that remains pending before this Court, Apple files this brief to correct them.

First, Epic claims that this is an “emergency” . . . entirely of Apple’s own making” because Apple agreed to submit its evidentiary proffer within 24 hours of a stay denial. Opp. 1; *see id.* at 6. That is incorrect. Apple did not propose this 24-hour deadline; Epic demanded it as the price of agreeing to a schedule that allowed Apple’s request for a stay to be considered before Apple was required to file its proffer. More importantly, Epic glosses over that, in seeking a stay, Apple specifically asked the district court to grant an administrative stay in the event that the court denied the stay motion (*see* Dkt. 1699 at 10 (Apple N.D. Cal. Stay Reply)), so that Apple could pursue further relief. Yet, on Tuesday, the district court not only denied Apple’s stay

request, it also denied Apple’s request for an administrative stay, requiring Apple to come immediately to this Court. That exigency was not one of Apple’s own making.¹

Second, Epic claims that the remand proceedings have nothing to do with the contempt finding and that the “remand proceedings will need to take place even if this Court vacates the contempt finding.” *See* Opp. 1-2. Again, that is incorrect. The Ninth Circuit explicitly instructed the district court to amend the April 30 Order—that is, its civil contempt order—on remand. *See* Pet. App. 10a, 29a, 34a-35a, 49a. Any remand is therefore inextricably tied to the civil contempt order, which is squarely before this Court. The fact that the Ninth Circuit gave the district court the option of amending the civil contempt order by creating a purgeable sanction or modifying the injunction does not change the fact that the remand is explicitly tied to the contempt order. Pet. App. 34a-35a. Epic does not deny that, under the mandate rule, the Ninth Circuit’s instructions govern. Appl. 14-15. If Apple prevails on the contempt issue before this Court, there will be no remand, because there will be no contempt finding to support a contempt order in the first instance.

More to the point, the legal framework the Ninth Circuit discussed for the remand proceedings—whether those proceedings take the form of a modification or fashioning a new contempt sanction—is itself the product of the contempt finding now before this Court. The Ninth Circuit’s conclusion that Apple violated the “spirit” of

¹ To the extent that Epic suggests that Apple delayed in seeking a stay from the district court, Epic is wrong, too. Apple filed its stay request promptly within a week of this Court’s order granting certiorari under an agreed upon briefing schedule. *See* Dkt. 1697. The district court denied that request on Tuesday, and Apple filed this application for relief with this Court within 24 hours of the district court’s order.

the injunction animated its remand instructions concerning how the district court should amend its civil contempt order even if the district court were to do so by modifying the injunction. *See* Pet. App. 34a n.9. But whether contempt is properly based on the “spirit” of an injunction is the precise question before this Court.

None of this is speculative. The district court has already invoked portions of the Ninth Circuit opinion that can only be understood as the product of its contempt analysis. For instance, in denying Apple’s stay motion, the district court explained that “[t]he current charge from the Ninth Circuit is to oversee proceedings reflecting the appropriate commission to be allowed ‘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.’” Dkt. 1706 at 2 (quoting *Epic Games, Inc. v. Apple, Inc.*, 161 F.4th 1162, 1187 (9th Cir. 2025)); *see also* Stay Tr. 6:6-11, 8:6-8 (Appl. App. 2). But the Ninth Circuit’s “necessary costs” framework was introduced by the Ninth Circuit as a “possible course[] of action to the district court regarding an appropriate commission or fee limitation on remand.” Pet. App. 35a. The only way to understand the “costs” limitation introduced by the Ninth Circuit is that it springs from the contempt finding. That the district court has already made clear its intent to adhere to that language shows that the contempt finding will infuse remand proceedings if they move forward now, before this Court’s review.

Because the remand instructions are part and parcel of the Ninth Circuit’s contempt analysis, they would fall with any decision by this Court reversing or vacating the contempt finding that motivated them. At the same time, if the district

court moves forward now, before this Court has had a chance to carefully consider these questions on the merits, it would undercut this Court’s authority to provide definitive guidance on a going-forward basis in this case.

Third, Epic wrongly claims that “the remand proceedings” are “already underway.” Opp. 4. That is true only in the most formalistic sense. The parties agreed to a schedule for the initial phases of that proceeding, while Apple’s stay request was still pending. The first filing due with the district court is Apple’s evidentiary proffer, which will be due imminently if this Court does not stay proceedings. That is why, again, Apple was forced to come to this Court to seek immediate relief. A stay at this juncture—before Apple is required to make its evidentiary proffer and remand proceedings pursuant to the Ninth Circuit’s decision begin—makes perfect sense and would simply preserve the true status quo (*contra* Opp. 6) until this Court can resolve the contempt issue at the heart of this case.

CONCLUSION

The Court should stay further district court proceedings until this Court has issued a decision on the merits and the case has returned to the district court.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory G. Garre", is written over a horizontal line.

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