





1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	DANIEL M. WALL, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	GEN. NOEL J. FRANCISCO, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	20
9	ORAL ARGUMENT OF:	
10	DAVID C. FREDERICK, ESQ.	
11	On behalf of the Respondents	32
12	REBUTTAL ARGUMENT OF:	
13	DANIEL M. WALL, ESQ.	
14	On behalf of the Petitioner	61
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 17-204, Apple versus Pepper.

Mr. Wall.

ORAL ARGUMENT OF DANIEL M. WALL

ON BEHALF OF THE PETITIONER

MR. WALL: Thank you, Mr. Chief Justice, and may it please the Court:

The only damages theory in this monopolization action is rooted in a 30 percent commission that Apple charges app developers and which allegedly causes those developers to increase app prices to consumers.

The case is barred by the Court's Illinois Brick doctrine because the developers' pricing decisions are necessarily in the causal chain that links the commission to any consumer damages.

If the commission increases beyond the competitive level, but apps developers do not change their apps prices, consumers suffer no damages. And if app developers do change their prices to pass on some or all of the

1 over-charge, well, that is precisely the kind  
2 of damages theory that the Illinois Brick  
3 doctrine prohibits.

4 JUSTICE GINSBURG: Is there any -- in  
5 -- in your view, is there any first buyer in  
6 this picture?

7 MR. WALL: Excuse me?

8 JUSTICE GINSBURG: Is there any first  
9 buyer in this picture?

10 MR. WALL: Well, there's -- there's  
11 two different buyers in this picture. There  
12 are the app developers who, by contract with  
13 Apple, are buying a package of services which  
14 include distribution and software and  
15 intellectual property and testing and -- and so  
16 forth.

17 And then the plaintiffs in this case  
18 are the -- the buyer of the apps themselves  
19 that are made with that package of goods and  
20 services and --

21 JUSTICE GINSBURG: My -- my question  
22 was within Illinois Brick, is there in this  
23 case anyone who would qualify as a first buyer  
24 with standing to sue Apple?

25 MR. WALL: The developers, yes.

1 Without a doubt, the developers are the ones  
2 who, in the first instance, pay the 30 percent  
3 commission.

4 I think it's -- it is -- it is  
5 important to root the analysis in the common  
6 ground, which has been conceded, that the only  
7 damages theory is based upon that 30 percent  
8 commission. That is charged by contract  
9 between Apple and the developers. And it is  
10 deducted from whatever price that the developer  
11 chooses to -- to set, subject to only the  
12 minimal restriction --

13 JUSTICE SOTOMAYOR: I'm sorry, the --  
14 the first sale is from Apple to the customer.  
15 It's the customer who pays the 30 percent.

16 MR. WALL: But there has always been a  
17 -- a transaction between Apple and the  
18 developer before that, which has the pricing  
19 decision of what the developer is going to do  
20 on account of the 30 percent commission. There  
21 is never --

22 JUSTICE SOTOMAYOR: Could I ask you  
23 something --

24 MR. WALL: Sure.

25 JUSTICE SOTOMAYOR: -- more generally

1 about Illinois Brick? That was a case of a  
2 vertical monopoly: A concrete block person,  
3 manufacturer, monopolizes the next intermediate  
4 market who then sells to a customer.

5 MR. WALL: Yes.

6 JUSTICE SOTOMAYOR: All right. This  
7 is not quite like that. This is dramatically  
8 different. This is a closed loop.

9 MR. WALL: It is a closed loop, but in  
10 terms of the injury theory, which is what is at  
11 issue in --

12 JUSTICE SOTOMAYOR: They're not  
13 claiming the 30 percent is their injury.

14 MR. WALL: No. They're --

15 JUSTICE SOTOMAYOR: They're -- they're  
16 claiming their injury is the suppression of --  
17 of a cheaper price, doesn't have to be  
18 30 percent. They're not seeking 30 percent of  
19 their sales.

20 They have to go out and prove at the  
21 next step how, without this monopoly, they  
22 would have paid less. It could be as little as  
23 a -- a penny or nothing or it could be  
24 something more. But the point is that this  
25 closed loop with Apple as its spoke, they are

1 the first purchaser of that 30 percent markup.

2 MR. WALL: No, they are not. The --  
3 the first purchaser is clearly the app  
4 developer, who, by contract, agrees that every  
5 time it puts a positive price on an app, it  
6 will allow Apple to -- to take 30 percent of  
7 it. And the damages theory --

8 JUSTICE SOTOMAYOR: Apple took  
9 30 percent from the customer, not from the  
10 developer.

11 MR. WALL: Apple collects the -- the  
12 funds, but even the Ninth Circuit here agreed  
13 that -- that the process -- the payment flow is  
14 immaterial to the Illinois Brick issue.

15 JUSTICE BREYER: Certainly, I wouldn't  
16 think that's true, even if they concluded it.  
17 And in a simple theory, I would have thought it  
18 would have been in antitrust for at least 100  
19 years. What you do is you look to see who you  
20 claim is the monopolist. Who do they claim is  
21 the monopolist?

22 MR. WALL: Apple.

23 JUSTICE BREYER: Apple. And if you  
24 pay -- if that's true, they can raise prices to  
25 some people, lower them to others, their



1 suppliers. And if you were injured because you  
2 paid them more, the monopolist, you can collect  
3 damages.

4 And if you're injured because they  
5 forced your price down, you're a supplier, you  
6 can collect damages. End of theory. I don't  
7 see anything in Illinois Brick that conflicts  
8 with that.

9 MR. WALL: Everything in Illinois  
10 Brick --

11 JUSTICE BREYER: All right. What is  
12 that?

13 MR. WALL: -- conflicts with that.

14 JUSTICE BREYER: Yeah.

15 MR. WALL: The -- the emphasis in all  
16 three of this Court's decision on both pass-on  
17 defenses and damages theories, that's what the  
18 doctrine disallows. It -- it says that --

19 JUSTICE BREYER: Yeah, it says that if  
20 -- I don't mean to interrupt you, but I don't  
21 want to -- you to miss the point I'm making.

22 If Joe Smith buys from Bill, who  
23 bought from the monopolist, then we have  
24 something indirect. But, if Joe Smith bought  
25 from the monopolist, it is direct. That's a

1 simple theory.

2 Now I can't find in reason or in case  
3 law or in anything I've ever learned in  
4 antitrust anything that would conflict with  
5 that. And what I want you is to tell me what?

6 MR. WALL: What conflicts with that in  
7 this case is that the alleged monopolization,  
8 which is over the distribution function,  
9 allegedly first manifests in a 30 percent  
10 commission. Consumers do not pay the  
11 30 percent commission.

12 There was an effort in the -- in the  
13 district court to try to argue that -- that  
14 Apple added that, but that was abandoned. So  
15 what we have here instead is a damage theory  
16 that runs through the independent pricing  
17 decisions of the app developers.

18 JUSTICE KAGAN: Does your answer to  
19 Justice Breyer depend on what you said, that  
20 the alleged monopolization is in the  
21 distribution function? Because I understood  
22 the -- the Respondents now to be saying, no,  
23 that's wrong; the alleged monopolization is in  
24 the apps themselves.

25 In other words, the consumer says you

1 have a monopoly on apps. You might also have a  
2 monopoly on the distribution function, which  
3 the app developers have to live with, but you  
4 have a monopoly on apps, which the consumers  
5 have to live with.

6 MR. WALL: In --

7 JUSTICE KAGAN: So, in responding to  
8 Justice Breyer, you said: Well, it's because  
9 the alleged monopoly is the distribution  
10 function. But I don't think that that's  
11 correct.

12 MR. WALL: Well, two points, Justice  
13 Kagan.

14 First of all, it is correct. The --  
15 the complaint repeatedly alleges at paragraphs  
16 3, 8, and 53 that this is a case about -- about  
17 a distribution market. It has always been a  
18 case about a distribution market. And it  
19 necessarily is because there is no good-faith  
20 allegation that -- that Apple actually  
21 monopolizes the apps as software.

22 It is -- it is simply the pipeline,  
23 the sale of the apps, which is -- which is  
24 alternately described in this case as either  
25 distribution or as the so-called aftermarket,

1 which is simply limiting that to iOS apps  
2 instead of the 80 percent of the apps --

3 JUSTICE BREYER: You know, there are  
4 an awful lot of words in this case that I tend  
5 to have trouble understanding. One is  
6 two-sided market. Another is a lot that you  
7 used.

8 MR. WALL: Uh-huh.

9 JUSTICE BREYER: So I go by simple  
10 analogy. If Bill buys from the monopolist, he  
11 is a direct purchaser. If Bill buys from Sam,  
12 who buys from the monopolist, he is an indirect  
13 purchaser. Anyone can understand that.

14 And when I get into what I think of as  
15 jargon, I begin to think: Suppose I were  
16 advising United Fruit Company. I have a great  
17 idea. You won't have to torpedo the boats of  
18 your competitors anymore.

19 Here's what you do: What you do is  
20 you buy from the farmers and you tell the  
21 farmers what you will pay the banana farmers is  
22 a very low price plus 30 percent commission.  
23 And then what you do is, when you sell to  
24 banana consumers throughout the world, you  
25 charge them that 30 percent commission, which

1 they say is a higher price. And if -- you,  
2 United Fruit, did not become a monopolist.

3 Now I think I'm advising Jay  
4 Rockefeller, John Rockefeller, and I give him  
5 the same advice. And I give the same advice to  
6 United Shoe, which happened to be a  
7 distribution company. And we thereby have --  
8 well, you see the point.

9 MR. WALL: But the difference here is  
10 -- is that there -- there is -- there is no  
11 third-party intermediary that is setting the  
12 price and exercising its independent  
13 determination as to whether any or all of the  
14 initial over-charge, which is some part or all  
15 of the commission, is going to manifest itself  
16 in the app's price. And that's why I started  
17 with -- with -- with the simple I would --  
18 would -- would say, you know, the hypothetical  
19 of imagine the price today is the competitive  
20 price, the 30 percent is the competitive price,  
21 and it goes up by 10 points tomorrow.

22 No consumer is injured unless the  
23 apps' prices change. The apps' prices have to  
24 change. And if they don't -- and they only  
25 change by virtue of a decision which implicates

1 everything this Court talked about in Hanover  
2 Shoe, in Illinois Brick, and in UtiliCorp.

3 JUSTICE KAGAN: Well, Mr. Wall, I  
4 think you're avoiding the question a bit  
5 because, I mean, the questions that are being  
6 put to you by my colleagues are really, what  
7 was Illinois Brick about? Was it about a  
8 vertical supply chain or, instead, was it about  
9 a pass-through theory?

10 Now, in the facts of Illinois Brick  
11 and, indeed, in the facts of all the Illinois  
12 Brick cases that we've discussed, you had both.  
13 So you didn't have to separate the two.

14 And now, here, you don't have both,  
15 because this is not a vertical supply chain,  
16 but there still is a pass-through mechanism.  
17 So then the question is, does Illinois Brick  
18 apply to that or not?

19 And I think what Justice Breyer was  
20 suggesting to you, that as long as it's not  
21 that vertical supply chain where the person is  
22 not buying from the monopolist itself, here,  
23 the person is transacting with the monopolist  
24 itself, that that's what separates this case  
25 from Illinois Brick and makes it entirely

1 different, notwithstanding that there's some  
2 kind of pass-through mechanism involved.

3 MR. WALL: I completely agree with you  
4 that the key to this is deciding what Illinois  
5 Brick was about. Was it simply a formalistic  
6 case about vertical chains, or was it about  
7 pass-through?

8 And in answering that question, I  
9 would begin with, first of all, with Hanover  
10 Shoe, which is about a pass-on defense and  
11 about the -- the difficulties in -- in the --  
12 the -- the potential complication of antitrust  
13 litigation through pass-on defense, and then  
14 the framing of the question in Illinois Brick  
15 by this Court which said, having already found  
16 that we will not allow a pass-on defense, we  
17 are now confronted with the question to whether  
18 allow pass-on to be used offensively.

19 It was 100 percent about pass-on. The  
20 vertical chain was the factual setting of the  
21 case, and, indeed, Respondents' argument would  
22 -- would have this Court believe that the  
23 factual setting is the sum and substance of the  
24 Court's reasoning.

25 JUSTICE ALITO: Mr. Wall, could I ask

1 you about what troubles me about your position,  
2 and -- and it is this: Illinois Brick was not  
3 about economic theory. It was about the  
4 court's -- the court's -- the basis for the  
5 decision was not economic theory, as I read the  
6 case. It's the court's calculation of what  
7 makes for an effective and efficient litigation  
8 scheme.

9 And maybe your answer to this question  
10 is that the validity of Illinois Brick is not  
11 before us. But I really wonder whether, in  
12 light of what has happened since then, the  
13 court's evaluation stands up.

14 Take the third point that it makes  
15 about that the direct -- the so-called direct  
16 purchasers are the most efficient and most --  
17 in the best position to -- to sue.

18 If we look at this case, how many app  
19 developers are there whose apps are sold at the  
20 Apple store?

21 MR. WALL: Tens of thousands.

22 JUSTICE ALITO: Yeah. Has any one of  
23 them ever sued?

24 MR. WALL: None have ever sued. There  
25 have been -- there have been plenty of



1 disputes, but none has ever gone to litigation.  
2 For that matter, no state or federal antitrust  
3 agency has ever sued either.

4 We do not take that -- we do not take  
5 the -- the absence of litigation as evidence of  
6 an oppressed developer community that cannot  
7 speak for itself. These -- you know, the fact  
8 of the matter is that nowadays major companies  
9 suing their suppliers happens all of the time.

10 The idea that it -- that it -- that it  
11 doesn't, which was decried by Judge Posner as  
12 fanciful, has proven to be fanciful because it  
13 literally happens all of the time.

14 JUSTICE GORSUCH: Well, Mr. Wall,  
15 along those lines, I -- I take your point that  
16 Illinois Brick and Hanover Shoe might be read  
17 about the economic realities of the  
18 pass-through mechanism being important, rather  
19 than the contractual formalities, whether it's  
20 a sales agent or a formal purchase between the  
21 manufacturer and the distributor.

22 And antitrust normally accounts for  
23 economics, rather than forms of contract.

24 MR. WALL: Indeed.

25 JUSTICE GORSUCH: I take your point.

1           But building on what Justice Alito had  
2           in mind, Illinois Brick has been questioned by  
3           31 states before this Court in an amicus brief.  
4           You're asking us to extend Illinois Brick,  
5           admittedly, only because of a contractual  
6           formality and the economic realities are the  
7           same. I'll spot you all of that for purposes  
8           of this question.

9           But why should we build on Illinois  
10          Brick? Shouldn't we question Illinois Brick,  
11          perhaps, given the fact that so many states  
12          have done so. They've repealed it.

13          There haven't been a huge number of  
14          reported problems with indirect purchasers and  
15          direct purchasers receiving double recovery,  
16          one of the problems Illinois Brick built on,  
17          and the other one, which Justice Alito alluded  
18          to, is direct purchasers don't always sue  
19          because there's a threat that monopolists will  
20          share the rents with the direct purchasers.

21                 MR. WALL: Right.

22                 JUSTICE GORSUCH: And indirect  
23          purchasers may be better suited to enforce the  
24          antitrust laws. So long wind-up.

25                 MR. WALL: Okay.

1 JUSTICE GORSUCH: Sorry, but there --  
2 there's the pitch.

3 MR. WALL: Sure. So a few things.

4 First of all, it is -- it is an  
5 enormously complicated and controversial issue,  
6 what to do with the Illinois Brick doctrine.

7 You can see this in -- in the briefing  
8 in this case where, yes, you did have states  
9 saying repeal it. You also had the plaintiffs'  
10 bar through the American Antitrust Institute  
11 say don't repeal it.

12 There have been, I think, on the order  
13 of 17 efforts in Congress to have -- have it  
14 changed. Not once has it ever gotten to the  
15 floor. It is a quintessentially controversial  
16 political issue which belongs across the  
17 street, not here.

18 I would disagree completely --

19 JUSTICE GINSBURG: Why? Why is that  
20 so if the Court created the doctrine in the  
21 first place?

22 MR. WALL: Because I don't think it's  
23 fair to say that the Court just created it.  
24 What the Court did was it applied the  
25 foundational principle of all Section 4

1 jurisprudence, which is the proximate cause  
2 principle of damages not going past the first  
3 step, and then it -- it dealt with that in the  
4 context of the potential for duplicative  
5 pass-through over-charge claims, which are a  
6 unique problem in antitrust.

7           It's not a general problem of all  
8 damage theories. But, when you have  
9 over-charge cases -- and this gets to Justice  
10 Gorsuch's point about the potential for -- for  
11 duplicative recovery -- it's not hypothetical.  
12 It's automatic. It's mathematical.

13           If the first purchaser gets  
14 100 percent of the over-charge because of  
15 Hanover Shoe, anything else that is recovered  
16 that gets added on to that is necessarily  
17 duplicative, and that's what happens in the  
18 district courts. You get the direct purchasers  
19 and the direct purchasers suing on whatever  
20 theory optimizes their level of recovery.

21           I'd like to reserve the rest of my  
22 time and turn it over to the Solicitor General  
23 at this point.

24           CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1                   General Francisco.

2                   ORAL ARGUMENT OF GEN. NOEL J. FRANCISCO  
3                   FOR THE UNITED STATES, AS AMICUS CURIAE,  
4                   SUPPORTING THE PETITIONER

5                   GENERAL FRANCISCO: Mr. Chief Justice,  
6                   and may it please the Court:

7                   I'd like to begin where Mr. Wall left  
8                   out, and I think it addresses many of the  
9                   questions that have been asked here.

10                  At bottom, Illinois Brick and Hanover  
11                  Shoe, properly understood, prohibit  
12                  pass-through theories. And they reflect a  
13                  basic application of the background principles  
14                  of proximate cause that this Court generally  
15                  reads into statutes of this sort, and, in  
16                  particular, the rule that damages stop at the  
17                  first step.

18                  Here, the first step is the app  
19                  maker's pricing decision, because the  
20                  Respondents, the consumers, are injured if and  
21                  only if the app makers decide to increase their  
22                  prices in order to recoup Apple's --

23                  JUSTICE KAGAN: General, I have to say  
24                  I find that a not intuitive argument, I mean,  
25                  because it just seems to me that when you're

1 looking at the relationship between the  
2 consumer and Apple, that there is only one  
3 step.

4 I mean, I pick up my iPhone. I go to  
5 Apple's App Store. I pay Apple directly with  
6 the credit card information that I've supplied  
7 to Apple. From -- from my perspective, I've  
8 just engaged in a one-step transaction with  
9 Apple.

10 And when I come in and say Apple is a  
11 monopolist and Apple is charging a  
12 super-competitive price by -- by extracting a  
13 commission that it can only extract because of  
14 its market power, I mean, there's my one step.

15 GENERAL FRANCISCO: Right. I  
16 understand that, Your Honor. But, in proximate  
17 cause, the issue is not transactional  
18 proximity. The issue is proximity between the  
19 illegal conduct on the one hand, here, Apple's  
20 monopolistic over-charge, and the injury to  
21 consumers on the other hand, here, the higher  
22 prices.

23 And Apple's monopolistic over-charge  
24 is not the direct cause of higher prices. The  
25 direct cause of the higher prices is the app

1 maker's decision to increase their prices in  
2 order to recoup the over-charge.

3 JUSTICE KAVANAUGH: How do we know  
4 that? How do we know that, given that Apple  
5 really operates as a retailer in many respects  
6 here, as Justice Kagan points out?

7 GENERAL FRANCISCO: Right.

8 JUSTICE KAVANAUGH: And how do we know  
9 that the 30 percent charge is not affecting the  
10 price?

11 GENERAL FRANCISCO: Well, you don't  
12 know --

13 JUSTICE KAVANAUGH: In the same way  
14 that any retailer that adds 30 percent would  
15 affect the ultimate price paid by the consumer?

16 GENERAL FRANCISCO: You don't know for  
17 sure, but that's the whole point. Here,  
18 because app makers set the final price, they  
19 have a choice to make: They either absorb the  
20 over-charge and keep prices the same, in which  
21 case the consumers aren't harmed at all, or  
22 they increase their prices to recoup the  
23 over-charge, in which case the app makers are  
24 also harmed because they face a drop in sales  
25 as a result of increased prices.

1 JUSTICE KAVANAUGH: But the consumers  
2 are harmed then too.

3 GENERAL FRANCISCO: Yes, Your Honor.  
4 And that's the whole point of Illinois Brick  
5 and Hanover Shoe. When you've got part of the  
6 harm going to that initial party that's bearing  
7 the full brunt of the over-charge in the first  
8 instance because of its pricing decision,  
9 that's the party that gets the whole claim.

10 JUSTICE KAVANAUGH: But we have  
11 ambiguity about what Illinois Brick means here,  
12 and shouldn't that ambiguity, if -- if there is  
13 such ambiguity, be resolved by looking at the  
14 text of the statute? Any person injured?

15 GENERAL FRANCISCO: Yes, Your Honor.

16 JUSTICE KAVANAUGH: That's broad.

17 GENERAL FRANCISCO: And what I think  
18 that Illinois Brick reflects is the type of  
19 statutory interpretation that this Court has  
20 engaged in in a variety of cases, including the  
21 RICO cases, including the Lexmark cases, where  
22 you interpret background principles of  
23 proximate cause to be built into the statute,  
24 including the rule that damages stop at the  
25 first step.



1 JUSTICE KAGAN: Does it make a  
2 difference, General, that -- that Apple is  
3 influencing the prices here? In other words,  
4 this is -- you're suggesting that the app  
5 developers are just sort of setting these  
6 prices independently --

7 GENERAL FRANCISCO: Uh-huh.

8 JUSTICE KAGAN: -- but I'll give you  
9 sort of two ways in which that's not true.

10 The first way is this 99 cent  
11 charge --

12 GENERAL FRANCISCO: Uh-huh.

13 JUSTICE KAGAN: -- which you might  
14 say, well, that doesn't matter because, you  
15 know, it could be 99 cents or it could be  
16 \$100.99.

17 But, in fact, these are all low-cost  
18 products for the most part. So saying a price  
19 has to end with the -- you know, the -- the  
20 number 99 is saying a lot about the fact that  
21 you can't charge 77 cents or 55 cents --

22 GENERAL FRANCISCO: Sure.

23 JUSTICE KAGAN: -- or 32 cents. So  
24 that's one.

25 And the other is the entire allegation

1 here is that Apple is truly a monopolist on  
2 both sides of the market. It's able to dictate  
3 to developers whatever price structure it  
4 wants, and it's also able to dictate to  
5 consumers what the nature of the sale is going  
6 to be.

7 GENERAL FRANCISCO: Right.

8 JUSTICE KAGAN: And in that event, it  
9 -- it sure seems as though, you know, Apple --  
10 you know, it happened to set up this commission  
11 that puts it in the ambit of Illinois Brick,  
12 but it could have done a thousand other things  
13 that are essentially the same that would have  
14 taken it out of the Illinois Brick rule.

15 GENERAL FRANCISCO: Sure. And let me  
16 take those points in turn. First, the 99 cent  
17 pricing policy.

18 The first thing I'll point out is it's  
19 not in the complaint, but we'll put that to the  
20 side and assume that it's part of this case.  
21 Here, I don't think it changes the fact that  
22 the app makers still control the overall price,  
23 and to the extent that -- to the extent that  
24 Respondents are harmed by that, it's based on a  
25 pass-through.

1           Look, if I go to an auction house and  
2 I have to bid in \$10 increments, nobody thinks  
3 the auction house is setting the price. The  
4 bidders are still setting the price. And,  
5 here, the Respondents are --

6           JUSTICE KAGAN: But if you have to bid  
7 in \$10 increments and the -- and the true  
8 alternative prices are \$3, \$5, and \$7 --

9           GENERAL FRANCISCO: Right.

10          JUSTICE KAGAN: -- then, indeed, you  
11 are setting the price.

12          GENERAL FRANCISCO: And, well, that's  
13 my second point, Your Honor. Here, any injury  
14 is based on a pass-through because app makers  
15 are either going to round up or they're going  
16 to round down. If they round down to the lower  
17 99 cent price point, the consumers aren't  
18 injured at all. If they round up to the next  
19 99 cent price point, the consumers are injured  
20 as a result of the pass-through theory. And  
21 it's that intermediating pricing decision that  
22 we think that under the principles of proximate  
23 cause that --

24          JUSTICE SOTOMAYOR: General, the  
25 problem is that they're not measuring damages

1 by that.

2 GENERAL FRANCISCO: I --

3 JUSTICE SOTOMAYOR: As I understand,  
4 they're saying it's not the 30 percent; it is  
5 what the price would be if we could buy apps  
6 outside of this closed loop.

7 GENERAL FRANCISCO: I --

8 JUSTICE SOTOMAYOR: And it could be  
9 theoretically a lot higher than the markup, it  
10 could well be within it, but the point is that  
11 that 30 percent -- that 30 percent or whatever  
12 that 30 --

13 GENERAL FRANCISCO: Uh-huh.

14 JUSTICE SOTOMAYOR: -- percent figure  
15 is, is not the measure of our damages. That's  
16 as I understand --

17 GENERAL FRANCISCO: Yeah --

18 JUSTICE SOTOMAYOR: -- that they're  
19 saying the developers may have their own claim,  
20 their damages likely have to stay within the  
21 30 percent, but we don't measure our damages by  
22 that.

23 GENERAL FRANCISCO: So, respectfully,  
24 I'll disagree with that, and in explaining it,  
25 Justice Kagan, I think I can also answer the

1 second part of your question.

2 The harm to the consumers here is that  
3 they have to pay higher prices for apps, and  
4 the reason they have to pay higher prices for  
5 apps -- and, Justice Kagan, this goes to your  
6 question -- is because Apple controls the  
7 pipeline that connects app makers on the one  
8 hand and iPhone users on the other.

9 And the way they exploit that pipeline  
10 through their alleged monopoly is by charging  
11 that 30 percent commission. So the only reason  
12 consumers are harmed here in the form of paying  
13 higher prices is because the app makers decide  
14 to increase their prices in order to recoup  
15 that commission.

16 And, Justice Breyer, to your question,  
17 the reason why this makes it different than  
18 your hypothetical of Bill buys from Sam and you  
19 have transactional proximity is because the  
20 question isn't proximity between the parties  
21 who are transacting with one another but  
22 proximity between the antitrust violation, the  
23 30 percent commission, and the harm to  
24 consumers in the form of higher prices.

25 JUSTICE BREYER: I wouldn't have

1 thought that was the antitrust violation. I  
2 would have thought the antitrust violation is  
3 having enormous market power achieved by not  
4 patents and not skill, foresight, and industry  
5 but, rather, anticompetitive or more  
6 restrictive than necessary practices.

7 Alcoa --

8 GENERAL FRANCISCO: For sure.

9 JUSTICE BREYER: -- Alcoa did not  
10 charge higher than competitive prices, and  
11 that's why Learned Hand said the easy life, not  
12 necessarily higher prices, is the reward,  
13 often, of monopoly. Now --

14 GENERAL FRANCISCO: For sure --

15 JUSTICE BREYER: -- I would have  
16 thought it's a matter for proof at the damages  
17 stage whether, in fact, Apple, assuming they  
18 prove it is a monopoly, has extracted higher  
19 than competitive prices from those particular  
20 people, the plaintiffs, or whether they've just  
21 had the easy life.

22 GENERAL FRANCISCO: Right.

23 JUSTICE BREYER: Now I don't think  
24 that's the stage we're at in this case. So, if  
25 you say right, right, right --

1                   GENERAL FRANCISCO: Well --

2                   JUSTICE BREYER: -- then they must  
3 win.

4                   GENERAL FRANCISCO: -- no -- so what I  
5 wanted to say is that, for sure, the Illinois  
6 Brick theory doesn't apply across the board,  
7 but it does apply when somebody is bringing an  
8 over-charge theory, as in Illinois Brick, as in  
9 Hanover Shoe, and as here. The --

10                  JUSTICE BREYER: Have we had trial on  
11 that?

12                  GENERAL FRANCISCO: Your Honor, where  
13 you have that kind of over-charge theory, what  
14 Illinois Brick says -- asks is, under basic  
15 principles of proximate cause, is there some  
16 party other than the monopolist that's standing  
17 in between the plaintiffs' injury in the form  
18 of higher prices and the monopolist's violation  
19 in the form of the commission.

20                  And whenever the price setter, the  
21 ultimate price setter, is somebody other than  
22 the monopolist, it's never the monopolist's  
23 over-charge that is the direct cause of the  
24 injury.

25                  JUSTICE KAVANAUGH: But -- but if the

1 app developer -- if Apple bought the apps from  
2 the app developer and then added 30 percent to  
3 it and sold it to the consumer, you would agree  
4 that a claim could lie there, correct?

5 GENERAL FRANCISCO: Your Honor, I want  
6 to make sure I understand the hypothetical. If  
7 Apple said --

8 JUSTICE KAVANAUGH: Apple's buying the  
9 app from the app developer for a price --

10 GENERAL FRANCISCO: Right.

11 JUSTICE KAVANAUGH: -- Apple's then  
12 adding 30 percent to that price and selling it  
13 to the consumer. The consumer alleges that  
14 Apple's doing that as a result of monopolistic  
15 behavior.

16 The claim lie?

17 GENERAL FRANCISCO: Yes, you can sue  
18 Apple directly, but you can't sue Apple if the  
19 -- if -- if Apple isn't the price-setting  
20 party, but the app maker is the price-setting  
21 party. And that's why -- may I finish the  
22 answer, Your Honor?

23 And that's why the key is who sets the  
24 price, and it's very hard to manipulate our  
25 rule because, under our rule, you actually have



1 to change the party that has the authority to  
2 set the final price, and that's a fundamental  
3 change in the nature of the transaction itself.

4 CHIEF JUSTICE ROBERTS: Thank you,  
5 counsel.

6 Mr. Frederick.

7 ORAL ARGUMENT OF DAVID C. FREDERICK

8 ON BEHALF OF THE RESPONDENTS

9 MR. FREDERICK: Thank you, Mr. Chief  
10 Justice, and may it please the Court:

11 Apple directed anticompetitive  
12 restraints at iPhone owners to prevent them  
13 from buying apps anywhere other than Apple's  
14 monopoly App Store. As a result, iPhone owners  
15 paid Apple more for apps than they would have  
16 paid in a competitive retail market.

17 Under this Court's precedents, iPhone  
18 owners have a cause of action under Section 4  
19 of the Clayton Act directly against Apple for  
20 those over-charges. The court of appeals  
21 should be affirmed for three reasons.

22 First, Illinois Brick is a bright-line  
23 rule that Respondents easily satisfy.

24 Second, Apple directed its monopoly  
25 abuses at Respondents. So it's appropriate

1 that Respondents can sue Apple for their  
2 damages as a result of those violations.

3 And, third, Apple seeks to expand and  
4 modify the bright-line rule of Illinois Brick  
5 to deny indisputably direct purchasers an  
6 antitrust remedy and to change the rule into a  
7 standardless inquiry that will be hard to apply  
8 at the pleadings stage.

9 Now, if I could return to the first  
10 point, the direct purchaser rule is a  
11 bright-line rule. This Court said so in  
12 Illinois Brick and, importantly, a case that  
13 has not yet been discussed today, in UtiliCorp,  
14 in which the Court said Illinois Brick is a  
15 bright-line rule for direct purchasers,  
16 notwithstanding the economics that go into  
17 that.

18 UtiliCorp was a case that protected  
19 the defendants, who were asserting that -- who  
20 -- who were asserting that the -- there was a  
21 break in the link of the chain.

22 This case is really the flip side of  
23 that to protect plaintiffs who directly  
24 purchased from the alleged antitrust violator  
25 and are claiming damages as a result of that

1 antitrust violation.

2 CHIEF JUSTICE ROBERTS: There's --  
3 there's one antitrust violation under your  
4 theory, which is the increase, the 30 percent  
5 increase that Apple imposes when it -- when  
6 it's -- when, as you put it, it sells the apps?

7 MR. FREDERICK: Wrong. And this is  
8 very important for the Court to understand.  
9 The antitrust violation here is the monopoly  
10 App Store. Consumers cannot buy an app  
11 anywhere other than Apple's 100 percent-owned  
12 monopoly App Store.

13 CHIEF JUSTICE ROBERTS: But, when it  
14 comes to the -- the 30 percent increase, you're  
15 -- you're obviously saying the purchasers,  
16 again, under your theory of the apps, are  
17 harmed by that and recover -- can recover  
18 damages for that, and also that the developers  
19 are harmed by that and they can recover damages  
20 for it as well.

21 In other words, to the extent it might  
22 be said that Apple is a two-sided market,  
23 they're -- they're subject to suit on both  
24 sides of the market for a single antitrust  
25 price increase that they're alleged to have

1 imposed.

2 MR. FREDERICK: So, Mr. Chief Justice,  
3 I think that your question kind of gets to the  
4 core of a lot of the confusion here because, by  
5 having a wholly-owned monopoly App Store, Apple  
6 is able to distort the market at the supply  
7 chain and at the retail chain for consumers.

8 We, representing consumer iPhone  
9 owners, are suing only for the damages that we  
10 incur. That is the higher than what a  
11 competitive market price would be for apps.

12 Our measure of damages is not  
13 necessarily the 30 percent. The 30 percent is  
14 simply proof that Apple is acting as a  
15 monopolist because it extracts --

16 CHIEF JUSTICE ROBERTS: No, no, I  
17 understand -- I understand your claim on your  
18 side of the market. But you do think that the  
19 developers have a claim as well, don't you?

20 MR. FREDERICK: Well, I have no grief  
21 --

22 CHIEF JUSTICE ROBERTS: It's the same?

23 MR. FREDERICK: I have -- it's not the  
24 same. It is a different claim.

25 CHIEF JUSTICE ROBERTS: For -- for the

1 same price increase --

2 MR. FREDERICK: No --

3 CHIEF JUSTICE ROBERTS: -- for the  
4 same --

5 MR. FREDERICK: -- I disagree with  
6 that, Mr. Chief Justice. Apple's supplier of  
7 the apps, if they have a claim, it is that  
8 Apple has distorted the market for the supply  
9 of apps in a way that hurts app developers'  
10 profits.

11 Their argument would be, if we weren't  
12 suffering under the one monopoly store  
13 constraint, we might be able to charge a  
14 different price lower than 99 cents and be able  
15 to get a direct purchase from an iPhone Apple  
16 owner.

17 CHIEF JUSTICE ROBERTS: Well, I think  
18 you're just saying that the measure of damages  
19 would be different between the two sides of the  
20 market?

21 MR. FREDERICK: And -- but they would  
22 be different damages.

23 JUSTICE KAGAN: In other words, you  
24 are saying the consumer says, I'm paying a  
25 higher price for the product. It might be the

1 entire 30 percent commission, it might be some  
2 portion of the 30 percent commission, that's  
3 super-competitive, but I'm paying a higher  
4 price for the product.

5 And the app developer says: Well, I  
6 don't -- you know, that's irrelevant to me. I  
7 don't have to buy the product. What's relevant  
8 to me is fewer people are buying my apps.

9 And that represents some amount of  
10 lost profits. But those two things are not --  
11 I mean, it is true that two people are being  
12 able to sue because Apple is -- is transacting  
13 with each of these people and each of them has  
14 a gripe against what -- the way Apple has  
15 structured the market.

16 But the damages are entirely  
17 different. One is a measure of lost profits,  
18 which may or may not exist. The other is I'm  
19 paying too much.

20 MR. FREDERICK: That's correct.

21 JUSTICE GORSUCH: Well, but, Mister --

22 JUSTICE ALITO: That's an interesting  
23 theory, but is that the theory -- is that your  
24 claim?

25 MR. FREDERICK: Yes.

1 JUSTICE ALITO: I thought this case  
2 was all about the 30 percent.

3 MR. FREDERICK: Well, the other side  
4 has been trying, Justice Alito, to make the  
5 case all about the 30 percent. But if you read  
6 the --

7 JUSTICE ALITO: So the 30 percent has  
8 nothing to do with this?

9 MR. FREDERICK: The -- what the  
10 30 percent is, is an allegation that Apple is  
11 monopolizing the sale of apps. And we know  
12 that because they can extract 30 percent on  
13 every single sale, which only a monopolist  
14 could do.

15 The 30 percent is not a measure of  
16 damages. I'm not aware of any case from this  
17 Court that says you have to plead antitrust  
18 damages with particularity. But the -- because  
19 of the ability to extract a monopoly rent, we  
20 can say in good faith that they -- we are  
21 paying more than we would pay than if a  
22 competitive market existed.

23 JUSTICE GORSUCH: Mr. Frederick, I  
24 think you'd agree that there can only be one  
25 monopoly rent. And then the question becomes,

1 who's paying it?

2           And it might be spread partially  
3 between direct purchasers and indirect  
4 purchasers. It might be partially spread  
5 between the app makers and the purchasers of  
6 apps. And disaggregating that is the question  
7 that we've been wrestling with here.

8           I guess here is where I'm stuck and  
9 need your help. You say that Illinois Brick is  
10 a bright-line rule premised on the existence of  
11 a contractual relationship between the buyer --  
12 the ultimate purchaser and the intermediate  
13 seller, and that there has to be that kind of  
14 relationship, rather than a sales agency  
15 relationship like we have here.

16           But antitrust doesn't usually depend  
17 upon such contractual formalities. It usually  
18 depends upon the underlying economics. And I  
19 have a hard time distinguishing this case from  
20 Illinois Brick in the sense of -- in the  
21 question of economic pass-through and the  
22 problems that it presents, the possibility that  
23 the intermediate purchaser may absorb the  
24 monopoly rent and not pass it along.

25           Now that raises for me the question,



1 further question, and I -- I -- I'll wind it up  
2 quickly, I promise, whether Illinois Brick is  
3 correct. All right. And you have an amicus  
4 that says it's not, but you don't make that  
5 argument.

6 I'm really curious why --

7 MR. FREDERICK: Because --

8 JUSTICE GORSUCH: -- the plaintiffs'  
9 bar is not making that argument before this  
10 Court.

11 MR. FREDERICK: Because --

12 JUSTICE GORSUCH: So there -- there's  
13 a whole -- a whole bunch of things for you to  
14 chew on.

15 MR. FREDERICK: Okay. I'll try to  
16 chew on them succinctly, Your Honor.

17 We haven't asked for Illinois Brick to  
18 be overruled because we plainly meet the  
19 bright-line rule. We paid Apple and Apple was  
20 --

21 JUSTICE GORSUCH: Say I don't -- say I  
22 don't buy the formalistic contractual -- it  
23 seems to me an argument in -- in -- in the law  
24 of contracts rather than the law of antitrust.  
25 So help me out with economics.

1           MR. FREDERICK: Economics, we paid  
2 money. Apple never shared that money with any  
3 middleman. Illinois Brick is a case about a  
4 middleman. There's no middleman here.

5           We paid the money. Apple kept  
6 30 percent of it --

7           JUSTICE GORSUCH: Again -- again, that  
8 --

9           MR. FREDERICK: -- before sending  
10 70 percent on.

11          JUSTICE GORSUCH: -- that's based on  
12 the form of the relationship.

13          MR. FREDERICK: But that --

14          JUSTICE GORSUCH: Talk to me about the  
15 possibility, the problem that the app producer  
16 might absorb the monopoly rent. That's the  
17 economic problem that I'm stuck with.

18          MR. FREDERICK: Okay. If I could try  
19 to answer your question with a hypothetical,  
20 and if the Court would indulge me, suppose in a  
21 competitive market the price for an app was 90  
22 cents, not 99 cents, as Apple is charging.

23          It's 90 cents. We would all agree, I  
24 think, that the consumer can sue for the nine  
25 cent differential between the monopoly price --

1 JUSTICE GORSUCH: I understand the 99  
2 cent argument.

3 MR. FREDERICK: Okay.

4 JUSTICE GORSUCH: Let's put that  
5 aside.

6 MR. FREDERICK: All right. Now that  
7 we've got that aside, let's look at it from the  
8 developer's perspective.

9 If they had a claim -- if they had a  
10 claim -- and I'm not saying that they do -- but  
11 if they had a claim, they would need to show  
12 the difference between the profits that they  
13 would have achieved in the monopoly App Store  
14 versus the profits they would have achieved at  
15 a competitive market price.

16 And that depends on three factors,  
17 okay? One is the difference in sales that they  
18 would achieve between 99 cents and 99 -- 90  
19 cents. The second is how their sales  
20 differences would affect their revenue. And  
21 the third is whether the commission was  
22 30 percent in a competitive market. Okay?

23 So, if you take my hypothetical, the  
24 damages for the developer, there are three  
25 possibilities. One is that it's zero. If the

1 commission went to 22 percent in a competitive  
2 market, the developer takes home 70 cents just  
3 as it does with Apple's 30 percent in a 99 cent  
4 monopoly market. At 22 percent commission, the  
5 developer has zero damages.

6 The developer would have positive  
7 damages if the commission were zero because  
8 then the app developer sustains damages of 20  
9 cents. The developer would make the 90 cents  
10 in the competitive market instead of the 70  
11 cents that Apple is now passing along by virtue  
12 of the monopoly market.

13 The damages would be negative, though,  
14 if, in a competitive market, the commission  
15 stayed at 30 percent because, there, the  
16 benefits that would achieve by the monopoly  
17 price of 99 cents give the developer an extra  
18 eight cents per transaction.

19 So, in that way, Mr. Chief Justice,  
20 the developer has a different claim that's  
21 based on its lost profits. And that would be  
22 irrespective of whether the buyer of the app,  
23 the consumer, sustains damage for the nine  
24 cents in my hypothetical.

25 You can run these out under different

1 -- you can get your law clerks to run all the  
2 different scenarios. It always works the same  
3 way.

4 JUSTICE BREYER: Unless we're --  
5 unless we're prepared to overrule, which wasn't  
6 our case, Alcoa, I think all you'd have to show  
7 is, one, they have monopoly power, and, two,  
8 they achieved it through less restrictive --  
9 for more restrictive than necessary practices,  
10 end of your burden.

11 In your case -- and -- and Justice  
12 Gorsuch is quite right, there's only one  
13 monopoly profit to be earned. And so you'd  
14 have a different question when you get to the  
15 damages stage. The different question is:  
16 Well, how did they divide that monopoly profit?

17 You'd like to show that they got some  
18 of it from consumers. But that's for a later  
19 proceeding.

20 MR. FREDERICK: That's correct.

21 JUSTICE BREYER: And you're adding one  
22 thing. One of the things that we want to use  
23 in order to prove that they do have monopoly  
24 power, i.e., the power to raise price  
25 significantly above a competitive level, is

1 they charge us so bloody much money. That's  
2 just a piece of evidence here, and we'll worry  
3 later, agreeing that there's only one monopoly  
4 profit in theory, as to who got what.

5 Now have I stated that correctly?

6 MR. FREDERICK: Yes, you have, Justice  
7 Breyer.

8 I mean, the basic problem in this case  
9 as it comes to this Court is who gets to  
10 complain about the monopoly App Store. We say,  
11 as the buyers of the apps from the monopoly App  
12 Store, there's no form or function, there are  
13 no contract issues, Justice Gorsuch, that  
14 create a different form versus function  
15 problem. We're paying the money. They're  
16 keeping it. And we think we're paying more  
17 than we're -- we would have to if the market  
18 was a competitive market.

19 JUSTICE KAVANAUGH: They say it would  
20 be different if Apple purchased the apps from  
21 the app developer and then added 30 percent on  
22 the sale.

23 And why is that not different?

24 MR. FREDERICK: Because it's  
25 irrelevant. And here's where we part company

1 from the Solicitor General. It's irrelevant  
2 who sets the price so long as what the  
3 violation is -- here, the monopoly App Store --  
4 leads to higher prices that the consumers have  
5 to pay. That's what the violation is. That's  
6 how we are proximately harmed.

7 So, in the very hypothetical, Justice  
8 Kavanaugh, that you posed to the Solicitor  
9 General, the Solicitor General concedes we are  
10 direct purchasers in a situation where the app  
11 developer sets the price and they simply tack  
12 on 30 percent by virtue of their monopoly  
13 power.

14 It's no different here. If you think  
15 about it in -- in terms of what is actually  
16 going on, suppose Apple dropped its commission  
17 from 30 percent to 20 percent, but it  
18 maintained the price restriction of a 99 cent  
19 app. From the consumer's perspective, we're  
20 still overpaying for the app. Under that  
21 hypothetical, Apple simply gives the app  
22 developer more money, but that doesn't affect  
23 the consumer welfare at all.

24 JUSTICE SOTOMAYOR: Now --

25 JUSTICE GORSUCH: Are we going to

1 create a -- I'm sorry. Go ahead, please.

2 JUSTICE SOTOMAYOR: The General said  
3 that if, in fact, Apple bought these products  
4 from suppliers and paid them and then added  
5 30 percent to you, that that would be a classic  
6 antitrust violation.

7 You're saying -- that's basically what  
8 they're doing here anyway. But let's take the  
9 reverse. Let's say they collected money from  
10 you and paid all of it over to the developer  
11 and then told the developer: Give us  
12 30 percent of that back.

13 Would you then still be a direct  
14 purchaser and --

15 MR. FREDERICK: So we would still be  
16 direct purchasers if, under your hypothetical,  
17 we're buying it from Apple and then Apple is  
18 engaging in the Justice Gorsuch form over  
19 function situations in terms of how the money  
20 gets moved around.

21 I think that the -- in that situation,  
22 we are still directly purchasing and we're  
23 still able to complain about Apple's violation.  
24 And I think, under your hypothetical, Justice  
25 Sotomayor, we have to keep the idea that Apple



1 is still operating a monopoly App Store.

2 It's no different than if there was a  
3 grocery store chain that monopolized the sale  
4 of all vegetables. If they -- if that is the  
5 only place you could buy vegetables, we would  
6 say that that monopoly store outlet was able to  
7 control prices and affect output. That's  
8 basically what's happening here.

9 JUSTICE GORSUCH: Well, I think  
10 Justice Sotomayor's question is a -- requires  
11 further exploration. I mean, are -- are we in  
12 danger of just incentivizing a restructuring of  
13 contracts here so that all that Apple does or  
14 people like it is make you purchase directly  
15 from the app provider and then it then returns  
16 the -- the profit to Apple later?

17 And if that's all we're doing, then  
18 what is the point of Illinois Brick? And you  
19 still haven't explained to me why the  
20 plaintiffs' bar isn't asking to overturn  
21 Illinois Brick when 31 states are. So help --  
22 help me on both those.

23 MR. FREDERICK: Well -- well --

24 JUSTICE GORSUCH: They're two separate  
25 questions.

1           MR. FREDERICK: -- okay. So -- so let  
2 me take the second one first, Justice Gorsuch.  
3 I don't represent the plaintiffs' bar. I  
4 represent the consumers in this case, and the  
5 consumers in this case have no brief and no  
6 beef with Illinois Brick.

7           We think we are direct purchasers. We  
8 satisfy the rule. We come within the bright  
9 line. That's okay with us.

10           What the Court decides doctrinally to  
11 do with Illinois Brick is obviously something  
12 where I think you go to a different situation  
13 if the case arises.

14           But, on your other point, I think it's  
15 the other side that is actually asking for the  
16 opportunity to use contracts in order to  
17 distort or recharacterize matters in a way that  
18 evades the Illinois Brick bright-line rule.

19           JUSTICE GORSUCH: Well -- well, assume  
20 for the moment that -- that I believe the  
21 economics underlying the two arrangements are  
22 very similar. Hard to distinguish. I haven't  
23 yet heard you give me a good argument why.

24           So let's just posit that. Then it  
25 really is just about form, isn't it?

1                   MR. FREDERICK: No, I think in that  
2 hypothetical, I would be prepared to say if we  
3 were paying the developer directly for the app  
4 and the app developer could set whatever price  
5 it wanted to set, okay, keep with me on that  
6 assumption, the app developer operating in a  
7 free market can set whatever it wants to set,  
8 and then Apple comes after the app developer  
9 and says, hey, you bought it -- the consumer  
10 bought it through our store, we want whatever  
11 we want, that becomes not a problem with the  
12 consumer; that becomes a problem between the  
13 developer and the app -- and the seller of the  
14 app.

15                   JUSTICE GORSUCH: Ah, so pricing  
16 control is really important to proximate cause  
17 then?

18                   MR. FREDERICK: I beg your pardon?

19                   JUSTICE GORSUCH: So pricing control  
20 is really important to proximate cause?

21                   MR. FREDERICK: No, pricing control is  
22 not important to pricing -- to proximate cause  
23 in the sense that whether -- I think, under  
24 direct proximate cause, we're buying the app  
25 directly from the app developer, and, remember,

1 a key part of my answer was the app developer  
2 can set that price competitively in a  
3 competitive market.

4 What arrangements happen between Apple  
5 exercising its monopoly control through the App  
6 Store and the supplier is not something we are  
7 proximately --

8 JUSTICE KAVANAUGH: Your -- your --

9 MR. FREDERICK: -- affected by that.

10 JUSTICE KAVANAUGH: Sorry to  
11 interrupt. Your point was that the other side  
12 is putting form over the reality?

13 MR. FREDERICK: That's correct. And  
14 -- and they're doing it in a way that is  
15 particularly standardless, because what the  
16 court in UtiliCorp held was that even when it  
17 is absolutely clear 100 percent of the  
18 over-charge is going from the natural gas  
19 supplier through the utility directly to the  
20 consumer, this Court held: No, we're going to  
21 keep the bright-line rule. Only the utility  
22 gets to complain about the natural gas  
23 over-charge.

24 And it was that bright-line rule that  
25 the Court said is going to apply. And the

1 reason is exactly, Justice Alito, for the point  
2 that you made, which is that it's about  
3 judicial administration at the pleadings stage.  
4 We're just trying to figure out who has the  
5 claim and who could complain about the  
6 antitrust violation. Here, that's clearly the  
7 consumers because we're the ones who are paying  
8 Apple the money to receive the app.

9           And so, to -- to Justice Kavanaugh, to  
10 finish off the point, what the other side is  
11 essentially asking is that, instead of having a  
12 bright-line rule, it's a very fuzzy rule,  
13 because they don't have a test for what  
14 constitutes a pass-through. They don't have a  
15 test that applies when there is no middleman.  
16 There's no middleman in this particular  
17 transaction. It's directly between the iPhone  
18 owner and Apple.

19           And so you're going to have to figure  
20 out, do they get a one ticket good for this  
21 case only? They happen to be the largest  
22 company in the world, or at least they were  
23 some weeks ago, and they are able to extract  
24 monopoly pricing by virtue of a unique  
25 e-commerce monopoly on their App Store.

1 JUSTICE ALITO: What concerns me about  
2 your argument is that it doesn't seem to be  
3 based on the way in which this claim was  
4 understood by the lower courts.

5 Maybe they misunderstood it. But, I  
6 mean, the opening line of the -- the order  
7 granting Apple's motion to dismiss the second  
8 amended complaint by the district court: "The  
9 thrust of Plaintiff's second amended complaint  
10 is that Apple has engaged in antitrust conduct  
11 by collecting 30 percent of the price of iPhone  
12 applications."

13 MR. FREDERICK: The district court  
14 just missed it, Justice Alito, respectfully.

15 JUSTICE ALITO: And where -- okay.  
16 Where -- can you point to me where in the Ninth  
17 Circuit's opinion they understood your claim in  
18 the way that you've characterized it this  
19 morning?

20 MR. FREDERICK: Yeah, they said on  
21 page 21a of the petition app -- I think that's  
22 the page -- that this is simply about a  
23 monopoly distribution and that it is a simple  
24 case as a result of that.

25 If you look at the bottom of 21a, the

1 very last paragraph: "Instead, we rest our  
2 analysis, as compelled by Hanover Shoe,  
3 Illinois Brick, UtiliCorp, and Delaware Valley,  
4 on the fundamental distinction between a  
5 manufacturer or producer on the one hand and a  
6 distributor on the other." Apple is a  
7 distributor of the iPhone apps, selling them  
8 directly to purchasers through its App Store.

9 And because of that, we have standing  
10 to complain that they are the seller of the  
11 apps. That's -- it's a very simple case in  
12 that -- as viewed through that lens.

13 Now I accept, Justice Alito, that  
14 there have been a lot of arguments and this  
15 idea about the 30 percent has led to a certain  
16 lack of clarity, but I think that the position  
17 we have written in our brief is the best  
18 articulation of what the underlying theory is  
19 here, and that is that the Apple monopoly App  
20 Store over-charges iPhone owners for apps.

21 JUSTICE KAGAN: And -- and -- and the  
22 rule of the end in 99-cent requirement in that  
23 theory is what? In other words, would your  
24 theory be the same if no such requirement  
25 existed, or would it not?

1           MR. FREDERICK: It would be still an  
2 over-charge case, Justice Kagan, because the  
3 theory economically is that, if you are having  
4 to buy only from a monopoly, you are paying  
5 more than you would if there was a, you know,  
6 discount apps warehouse or you could buy  
7 directly from the app's developer.

8           Our assertion is that, with multiple  
9 sellers, multiple suppliers of the apps, we  
10 would be able to buy them at a lower price.  
11 It's that competition.

12           JUSTICE KAGAN: So what's the  
13 significance of that end in 99-cent rule?

14           MR. FREDERICK: The significance of it  
15 is that it informs the price elevation and the  
16 price over-charge. And it also informs that,  
17 contrary to Apple's assertion, they are not the  
18 agent of the apps developers. I mean, they put  
19 that in their contract. That's -- that's where  
20 you get to Justice Gorsuch's form over  
21 substance problem, because, at 99 cents,  
22 they're telling the app developer, we're  
23 foreclosing from you 99 percent of all pricing  
24 options.

25           CHIEF JUSTICE ROBERTS: Well, if it's



1 that significant, why didn't you include it in  
2 the complaint?

3 MR. FREDERICK: Because it's not  
4 significant from this perspective, Mr. Chief  
5 Justice, and that is that, with a monopoly  
6 store, the prices are over-charged, our theory  
7 is relatively simple. They brought up the 99  
8 cents in the blue brief.

9 I think it's at page 9 of their brief  
10 where they raise the 99 cent issue. And as we  
11 were thinking about what the implications of  
12 that were, it became clear to us that that  
13 meant the app developer couldn't possibly be --

14 JUSTICE GORSUCH: Sounds kind of late  
15 in the day --

16 JUSTICE KAVANAUGH: It's another --

17 JUSTICE GORSUCH: -- to come up with a  
18 new litigation theory.

19 MR. FREDERICK: Well, no, we're at a  
20 pleadings stage, Justice Gorsuch.

21 JUSTICE GORSUCH: In the Supreme  
22 Court, a blue brief, really?

23 MR. FREDERICK: Well, it's their --

24 JUSTICE GORSUCH: I mean, should we be  
25 taking that up now? I mean, maybe you can

1 amend your complaint or something like that on  
2 remand, but should we be addressing that?

3 MR. FREDERICK: Well, Justice Gorsuch,  
4 they were the ones, is what I'm saying, that  
5 brought up the 99 cents. It wasn't us.

6 JUSTICE GORSUCH: But we're usually --

7 JUSTICE KAVANAUGH: It's not --

8 JUSTICE GORSUCH: -- a court of  
9 review, not first view, right.

10 MR. FREDERICK: Well, no, our point  
11 was that when they raised the 99 cents is  
12 somehow proof that the developer actually gets  
13 to set the price, we say, no, it's actually  
14 irrelevant for the reasons which I've already  
15 stated.

16 But, secondly, it's just wrong  
17 because, if you're constraining what 99 percent  
18 of the pricing options are, you know, that --  
19 that's -- it is what it is.

20 But it also has the effect  
21 economically of raising the prices --

22 JUSTICE KAVANAUGH: It's going to --

23 MR. FREDERICK: -- that the consumers  
24 have -- have to pay.

25 JUSTICE KAVANAUGH: It's going to add

1 to your damages, correct?

2 MR. FREDERICK: Well, it --

3 JUSTICE KAVANAUGH: Potentially.

4 MR. FREDERICK: -- it could  
5 potentially add to the damages or it could  
6 subtract from the damages.

7 JUSTICE KAVANAUGH: Correct.

8 MR. FREDERICK: We don't know. What  
9 we know is what the price is in a  
10 noncompetitive market, and we will have to have  
11 experts that will assess what the damages would  
12 be in a competitive market.

13 JUSTICE KAVANAUGH: Your theory  
14 doesn't depend on the 99 cent?

15 MR. FREDERICK: Our theory of damages  
16 or our theory of the violation?

17 JUSTICE KAVANAUGH: Well, the --

18 MR. FREDERICK: The theory of the  
19 violation is the wholly-owned monopoly App  
20 Store as the place to sell apps. That is what  
21 the violation is here. And how you calculate  
22 the damages is you look at what is the  
23 over-charge based on what the monopoly is  
24 selling the app for versus what it would be  
25 sold for in a competitive market.

1           The antitrust scholars, and I would  
2           direct you to page 23 of their brief, they go  
3           through a lot of the pricing scenarios that you  
4           have explored through hypotheticals here and  
5           they make very clear that, as a matter of  
6           function, what is happening here is that the  
7           monopoly seller of the apps here is extracting  
8           an over-charge from the purchasers who are  
9           direct purchasers of those apps.

10           JUSTICE ALITO: If this case were to  
11           go to trial as a class action, would every app  
12           purchaser potentially be entitled to three  
13           times the 30 percent over-charge, or would it  
14           depend on the particular app?

15           MR. FREDERICK: Your Honor, I -- I  
16           think that -- I don't know the answer to your  
17           question fully. I'll be candid. I have not  
18           thought about how the experts are actually  
19           going to try to prove it up.

20           What I would say, though, is that  
21           they're probably -- what will likely happen is  
22           that because there are apps that are sold at 99  
23           cent, a huge number of them are free, but a  
24           huge number are sold at 99 cents, some other  
25           strata is sold for \$1.99, some other strata is

1 sold for \$2.99 or \$6.99, and I haven't put my  
2 head around, to be perfectly honest, exactly  
3 how you would carve up the damages on some sort  
4 of a pro rata basis. But the idea, of course,  
5 of the Clayton Act is that treble damages is  
6 designed to deter antitrust violations.

7 And so this Court has made very clear  
8 in its cases that the point of having that  
9 deterrence is to avoid having the monopolist in  
10 this case act in a way that it's not penalized  
11 for its monopoly behavior.

12 And if you were to suppose that it was  
13 just a single damages problem, it would be easy  
14 for monopolists to simply act, and, if they get  
15 caught, they just simply pay over what they  
16 caused in damage, but the idea behind the  
17 Clayton Act's treble damages remedy is designed  
18 to deter actions just like this.

19 And that is why Apple cannot point to  
20 another e-commerce distributor that does what  
21 it does. In every other instance, as we point  
22 out in the red brief, there is an alternative  
23 to buying the product.

24 And, in fact, Apple doesn't even do  
25 this with its own computer software. And we

1 have pleaded that in the complaint, Mr. Chief  
2 Justice, where we say that, if you buy  
3 software, you can buy it open source and you do  
4 not have to buy it through Apple's monopoly  
5 chain.

6 So the iPhone app monopoly App Store  
7 is a unique feature of the e-commerce setting.  
8 Apple has found ways using technology and  
9 contractual constraints to limit the  
10 opportunity of a competitive market to  
11 flourish.

12 If a competitive market did flourish,  
13 the prices that iPhone owners pay would be  
14 lower. Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,  
16 counsel.

17 Three minutes, Mr. Wall.

18 REBUTTAL ARGUMENT OF DANIEL M. WALL

19 ON BEHALF OF THE PETITIONERS

20 MR. WALL: Thank you, Mr. Chief  
21 Justice.

22 I think I need to begin with the  
23 experience I had in this case for its first  
24 nine years, and that is it was about a  
25 30 percent commission.

1           Paragraph 48 of the complaint is -- is  
2 -- is the key allegation, which is the root of  
3 the damages theory, which maintains that the  
4 30 percent commission is a monopoly price.  
5 It's called a monopoly price.

6           It's elsewhere called a  
7 super-competitive price. It is the root of the  
8 damages theory not just in part, not just on  
9 the periphery, but entirely.

10           The brief in opposition at -- at pages  
11 5 and 12 make this unmistakably clear. At --  
12 at page 5, the brief in opposition states:  
13 "Respondents seek damages based solely on the  
14 30 percent markup."

15           So whatever other attributes of this  
16 case one may want to talk about that might  
17 contribute to the liability theory, the injury  
18 theory, the damages theory, is, in their words,  
19 solely about the -- the 30 percent.

20           JUSTICE GINSBURG: Mr. Wall, I have a  
21 question about this Court's case law, and I'd  
22 -- I'd like your answer to it.

23           If Apple had in every agreement with  
24 an iPhone owner a provision that you can sue --  
25 you can't sue, you have to go to an arbitrable

1 forum in a one-by-one, then Apple would be home  
2 free in this case?

3 MR. WALL: We -- we do not have such a  
4 provision. In fact, the -- all of the relevant  
5 agreements with both developers and consumers  
6 state that -- that there shall be litigation in  
7 the Northern District of California.

8 JUSTICE GINSBURG: Yeah, I -- I know  
9 -- I know you don't, but suppose you did.

10 MR. WALL: If -- if that were the  
11 case, then this would be a matter for  
12 arbitration, and I don't think it changes the  
13 legal question.

14 JUSTICE GINSBURG: And -- and it would  
15 take this case out of this Court, put it in an  
16 arbitrable forum, with a single complainant?

17 MR. WALL: Indeed, it -- it would, but  
18 that's not this case. There is -- there is no  
19 concern about that in this case.

20 The second point that I want to make  
21 is -- relates to this duplicative recovery  
22 possibility. It -- there is -- we never heard  
23 any suggestion prior to the Respondents' merits  
24 brief about potential lost profits claims based  
25 upon monopsony.



1           To the contrary, the theory throughout  
2 the life of this case is that -- that  
3 developers, if they sued, would sue over the  
4 same 30 percent markup. The brief in  
5 opposition at 12 says any claim by the app's  
6 developers -- excuse me -- a claim by the app's  
7 developers, even if they had one, would not  
8 overlap the 30 percent markup paid by app's  
9 purchasers. Rather, it is a piece of the same  
10 30 percent pie.

11           So going back to what is Illinois  
12 Brick about, it is about not having that  
13 apportionment fight. They admitted to the --  
14 to the time that this case was on this Court's  
15 doorstep that this is all about an  
16 apportionment fight between the developers.

17           As -- as to the -- the -- the -- which  
18 is the better rule, the formalistic rule or the  
19 substantive rule, I suggest that -- that the  
20 formalistic rule is always the one that is most  
21 subject to manipulation.

22           The substantive rule that asks is your  
23 damages theory a pass-on theory focuses on what  
24 is of economic substance. And, here, that's  
25 what the district court judge did.

1           In -- in a patient but persistent  
2 manner, she required them to say what is your  
3 theory. And it -- and at JA 137 to 143, you  
4 see the transcript of the district court  
5 argument when -- when, finally, at JA 141, they  
6 said -- or 143, rather -- they said their  
7 theory is that, because of the commission, the  
8 developer would mark up the app.

9           That is a classic over-charge case.  
10 Now, to be sure, in a new setting, it's a new  
11 world setting. It's not the brick-and-mortar  
12 setting of the three cases that this case --  
13 that this Court has decided before. But it is  
14 the same economics that should have the same  
15 outcome prohibiting pass-through damages  
16 claims.

17           CHIEF JUSTICE ROBERTS: Thank you,  
18 counsel. The case is submitted.

19           (Whereupon, at 11:05 a.m., the case  
20 was submitted.)

21

22

23

24

25

## Official - Subject to Final Review

<b>\$</b>	<b>90</b> <sup>[4]</sup> 41:21,23 <b>42</b> :18 <b>43</b> :9	<b>59</b> :10	<b>appropriate</b> <sup>[1]</sup> 32:25
<b>\$1.99</b> <sup>[1]</sup> 59:25	<b>99</b> <sup>[24]</sup> 24:10,15,20 <b>25</b> :16 <b>26</b> :17,19	<b>allegation</b> <sup>[4]</sup> 10:20 <b>24</b> :25 <b>38</b> :10	<b>apps</b> <sup>[37]</sup> 3:22,23 <b>4</b> :18 <b>9</b> :24 <b>10</b> :1,4,
<b>\$10</b> <sup>[2]</sup> 26:2,7	<b>36</b> :14 <b>41</b> :22 <b>42</b> :1,18,18 <b>43</b> :3,17	<b>62</b> :2	21,23 <b>11</b> :1,2 <b>15</b> :19 <b>27</b> :5 <b>28</b> :3,5 <b>31</b> :
<b>\$100.99</b> <sup>[1]</sup> 24:16	<b>46</b> :18 <b>55</b> :21,23 <b>56</b> :7,10 <b>57</b> :5,11,	<b>alleged</b> <sup>[7]</sup> 9:7,20,23 <b>10</b> :9 <b>28</b> :10	1 <b>32</b> :13,15 <b>34</b> :6,16 <b>35</b> :11 <b>36</b> :7,9
<b>\$2.99</b> <sup>[1]</sup> 60:1	<b>17</b> <b>58</b> :14 <b>59</b> :22,24	<b>33</b> :24 <b>34</b> :25	<b>37</b> :8 <b>38</b> :11 <b>39</b> :6 <b>45</b> :11,20 <b>54</b> :7,11,
<b>\$3</b> <sup>[1]</sup> 26:8	<b>99-cent</b> <sup>[2]</sup> 54:22 <b>55</b> :13	<b>allegedly</b> <sup>[2]</sup> 3:14 <b>9</b> :9	20 <b>55</b> :6,9,18 <b>58</b> :20 <b>59</b> :7,9,22
<b>\$5</b> <sup>[1]</sup> 26:8	<b>A</b>	<b>alleges</b> <sup>[2]</sup> 10:15 <b>31</b> :13	<b>apps'</b> <sup>[2]</sup> 12:23,23
<b>\$6.99</b> <sup>[1]</sup> 60:1	<b>a.m</b> <sup>[3]</sup> 1:14 <b>3</b> :2 <b>65</b> :19	<b>allow</b> <sup>[3]</sup> 7:6 <b>14</b> :16,18	<b>arbitrable</b> <sup>[2]</sup> 62:25 <b>63</b> :16
<b>\$7</b> <sup>[1]</sup> 26:8	<b>abandoned</b> <sup>[1]</sup> 9:14	<b>alluded</b> <sup>[1]</sup> 17:17	<b>arbitration</b> <sup>[1]</sup> 63:12
<b>1</b>	<b>ability</b> <sup>[1]</sup> 38:19	<b>already</b> <sup>[2]</sup> 14:15 <b>57</b> :14	<b>aren't</b> <sup>[2]</sup> 22:21 <b>26</b> :17
<b>10</b> <sup>[1]</sup> 12:21	<b>able</b> <sup>[10]</sup> 25:2,4 <b>35</b> :6 <b>36</b> :13,14 <b>37</b> :	<b>alternately</b> <sup>[1]</sup> 10:24	<b>argue</b> <sup>[1]</sup> 9:13
<b>10:05</b> <sup>[2]</sup> 1:14 <b>3</b> :2	12 <b>47</b> :23 <b>48</b> :6 <b>52</b> :23 <b>55</b> :10	<b>alternative</b> <sup>[2]</sup> 26:8 <b>60</b> :22	<b>argument</b> <sup>[20]</sup> 1:13 2:2,5,9,12 <b>3</b> :4,
<b>100</b> <sup>[5]</sup> 7:18 <b>14</b> :19 <b>19</b> :14 <b>34</b> :11 <b>51</b> :	<b>above</b> <sup>[1]</sup> 44:25	<b>ambiguity</b> <sup>[3]</sup> 23:11,12,13	7 <b>14</b> :21 <b>20</b> :2,24 <b>32</b> :7 <b>36</b> :11 <b>40</b> :5,9,
17	<b>above-entitled</b> <sup>[1]</sup> 1:12	<b>ambit</b> <sup>[1]</sup> 25:11	23 <b>42</b> :2 <b>49</b> :23 <b>53</b> :2 <b>61</b> :18 <b>65</b> :5
<b>11:05</b> <sup>[1]</sup> 65:19	<b>absence</b> <sup>[1]</sup> 16:5	<b>amend</b> <sup>[1]</sup> 57:1	<b>arguments</b> <sup>[1]</sup> 54:14
<b>12</b> <sup>[2]</sup> 62:11 <b>64</b> :5	<b>absolutely</b> <sup>[1]</sup> 51:17	<b>amended</b> <sup>[2]</sup> 53:8,9	<b>arises</b> <sup>[1]</sup> 49:13
<b>137</b> <sup>[1]</sup> 65:3	<b>absorb</b> <sup>[3]</sup> 22:19 <b>39</b> :23 <b>41</b> :16	<b>American</b> <sup>[1]</sup> 18:10	<b>around</b> <sup>[2]</sup> 47:20 <b>60</b> :2
<b>141</b> <sup>[1]</sup> 65:5	<b>abuses</b> <sup>[1]</sup> 32:25	<b>amicus</b> <sup>[5]</sup> 1:22 2:7 <b>17</b> :3 <b>20</b> :3 <b>40</b> :3	<b>arrangements</b> <sup>[2]</sup> 49:21 <b>51</b> :4
<b>143</b> <sup>[2]</sup> 65:3,6	<b>accept</b> <sup>[1]</sup> 54:13	<b>amount</b> <sup>[1]</sup> 37:9	<b>articulation</b> <sup>[1]</sup> 54:18
<b>17</b> <sup>[1]</sup> 18:13	<b>account</b> <sup>[1]</sup> 5:20	<b>analogy</b> <sup>[1]</sup> 11:10	<b>aside</b> <sup>[2]</sup> 42:5,7
<b>17-204</b> <sup>[1]</sup> 3:4	<b>accounts</b> <sup>[1]</sup> 16:22	<b>analysis</b> <sup>[2]</sup> 5:5 <b>54</b> :2	<b>asks</b> <sup>[2]</sup> 30:14 <b>64</b> :22
<b>2</b>	<b>achieve</b> <sup>[2]</sup> 42:18 <b>43</b> :16	<b>Another</b> <sup>[4]</sup> 11:6 <b>28</b> :21 <b>56</b> :16 <b>60</b> :	<b>asserting</b> <sup>[2]</sup> 33:19,20
<b>20</b> <sup>[3]</sup> 2:8 <b>43</b> :8 <b>46</b> :17	<b>achieved</b> <sup>[4]</sup> 29:3 <b>42</b> :13,14 <b>44</b> :8	20	<b>assertion</b> <sup>[2]</sup> 55:8,17
<b>2018</b> <sup>[1]</sup> 1:10	<b>across</b> <sup>[2]</sup> 18:16 <b>30</b> :6	<b>answer</b> <sup>[8]</sup> 9:18 <b>15</b> :9 <b>27</b> :25 <b>31</b> :22	<b>assess</b> <sup>[1]</sup> 58:11
<b>21a</b> <sup>[2]</sup> 53:21,25	<b>Act</b> <sup>[4]</sup> 32:19 <b>60</b> :5,10,14	41:19 <b>51</b> :1 <b>59</b> :16 <b>62</b> :22	<b>assume</b> <sup>[2]</sup> 25:20 <b>49</b> :19
<b>22</b> <sup>[2]</sup> 43:1,4	<b>Act's</b> <sup>[1]</sup> 60:17	<b>answering</b> <sup>[1]</sup> 14:8	<b>assuming</b> <sup>[1]</sup> 29:17
<b>23</b> <sup>[1]</sup> 59:2	<b>acting</b> <sup>[1]</sup> 35:14	<b>anticompetitive</b> <sup>[2]</sup> 29:5 <b>32</b> :11	<b>assumption</b> <sup>[1]</sup> 50:6
<b>26</b> <sup>[1]</sup> 1:10	<b>action</b> <sup>[3]</sup> 3:12 <b>32</b> :18 <b>59</b> :11	<b>antitrust</b> <sup>[25]</sup> 7:18 <b>9</b> :4 <b>14</b> :12 <b>16</b> :2,	<b>attributes</b> <sup>[1]</sup> 62:15
<b>3</b>	<b>actions</b> <sup>[1]</sup> 60:18	22 <b>17</b> :24 <b>18</b> :10 <b>19</b> :6 <b>28</b> :22 <b>29</b> :1,2	<b>auction</b> <sup>[2]</sup> 26:1,3
<b>3</b> <sup>[2]</sup> 2:4 <b>10</b> :16	<b>actually</b> <sup>[7]</sup> 10:20 <b>31</b> :25 <b>46</b> :15 <b>49</b> :	33:6,24 <b>34</b> :1,3,9,24 <b>38</b> :17 <b>39</b> :16	<b>authority</b> <sup>[1]</sup> 32:1
<b>30</b> <sup>[58]</sup> 3:12 <b>5</b> :2,7,15,20 <b>6</b> :13,18,18	15 <b>57</b> :12,13 <b>59</b> :18	40:24 <b>47</b> :6 <b>52</b> :6 <b>53</b> :10 <b>59</b> :1 <b>60</b> :6	<b>automatic</b> <sup>[1]</sup> 19:12
7:1,6,9 <b>9</b> :9,11 <b>11</b> :22,25 <b>12</b> :20 <b>22</b> :	<b>add</b> <sup>[2]</sup> 57:25 <b>58</b> :5	<b>anyway</b> <sup>[1]</sup> 47:8	<b>avoid</b> <sup>[1]</sup> 60:9
9,14 <b>27</b> :4,11,11,12,21 <b>28</b> :11,23 <b>31</b> :	<b>added</b> <sup>[9]</sup> 9:14 <b>19</b> :16 <b>31</b> :2 <b>45</b> :21	<b>app</b> <sup>[72]</sup> 3:13,15,24 <b>4</b> :12 <b>7</b> :3,5 <b>9</b> :17	<b>avoiding</b> <sup>[1]</sup> 13:4
2,12 <b>34</b> :4,14 <b>35</b> :13,13 <b>37</b> :1,2 <b>38</b> :2,	47:4	10:3 <b>15</b> :18 <b>20</b> :18,21 <b>21</b> :5,25 <b>22</b> :	<b>aware</b> <sup>[1]</sup> 38:16
5,7,10,12,15 <b>41</b> :6 <b>42</b> :22 <b>43</b> :3,15	<b>adding</b> <sup>[2]</sup> 31:12 <b>44</b> :21	18,23 <b>24</b> :4 <b>25</b> :22 <b>26</b> :14 <b>28</b> :7,13	<b>awful</b> <sup>[1]</sup> 11:4
45:21 <b>46</b> :12,17 <b>47</b> :5,12 <b>53</b> :11 <b>54</b> :	<b>addresses</b> <sup>[1]</sup> 20:8	31:1,2,9,9,20 <b>32</b> :14 <b>34</b> :10,10,12	<b>B</b>
<b>55</b> <sup>[59]</sup> 13 <b>61</b> :25 <b>62</b> :4,14,19 <b>64</b> :4,8,	<b>addressing</b> <sup>[1]</sup> 57:2	35:5 <b>36</b> :9 <b>37</b> :5 <b>39</b> :5 <b>41</b> :15,21 <b>42</b> :	<b>back</b> <sup>[2]</sup> 47:12 <b>64</b> :11
10	<b>adds</b> <sup>[1]</sup> 22:14	13 <b>43</b> :8,22 <b>45</b> :10,11,21 <b>46</b> :3,10,19,	<b>background</b> <sup>[2]</sup> 20:13 <b>23</b> :22
<b>31</b> <sup>[2]</sup> 17:3 <b>48</b> :21	<b>administration</b> <sup>[1]</sup> 52:3	20,21 <b>48</b> :1,15 <b>50</b> :3,4,6,8,13,14,24,	<b>banana</b> <sup>[2]</sup> 11:21,24
<b>32</b> <sup>[2]</sup> 2:11 <b>24</b> :23	<b>admitted</b> <sup>[1]</sup> 64:13	25 <b>51</b> :1,5 <b>52</b> :8,25 <b>53</b> :21 <b>54</b> :8,19	<b>bar</b> <sup>[4]</sup> 18:10 <b>40</b> :9 <b>48</b> :20 <b>49</b> :3
<b>4</b>	<b>admittedly</b> <sup>[1]</sup> 17:5	55:22 <b>56</b> :13 <b>58</b> :19,24 <b>59</b> :11,14 <b>61</b> :	<b>barred</b> <sup>[1]</sup> 3:16
<b>4</b> <sup>[2]</sup> 18:25 <b>32</b> :18	<b>advice</b> <sup>[2]</sup> 12:5,5	6,6 <b>65</b> :8	<b>based</b> <sup>[9]</sup> 5:7 <b>25</b> :24 <b>26</b> :14 <b>41</b> :11
<b>48</b> <sup>[1]</sup> 62:1	<b>advising</b> <sup>[2]</sup> 11:16 <b>12</b> :3	<b>app's</b> <sup>[5]</sup> 12:16 <b>55</b> :7 <b>64</b> :5,6,8	43:21 <b>53</b> :3 <b>58</b> :23 <b>62</b> :13 <b>63</b> :24
<b>5</b>	<b>affect</b> <sup>[4]</sup> 22:15 <b>42</b> :20 <b>46</b> :22 <b>48</b> :7	<b>appeals</b> <sup>[1]</sup> 32:20	<b>basic</b> <sup>[3]</sup> 20:13 <b>30</b> :14 <b>45</b> :8
<b>5</b> <sup>[2]</sup> 62:11,12	<b>affected</b> <sup>[1]</sup> 51:9	<b>APPEARANCES</b> <sup>[1]</sup> 1:16	<b>basically</b> <sup>[2]</sup> 47:7 <b>48</b> :8
<b>53</b> <sup>[1]</sup> 10:16	<b>affecting</b> <sup>[1]</sup> 22:9	<b>APPLE</b> <sup>[76]</sup> 1:3 <b>3</b> :5,13 <b>4</b> :13,24 <b>5</b> :9,	<b>basis</b> <sup>[2]</sup> 15:4 <b>60</b> :4
<b>55</b> <sup>[1]</sup> 24:21	<b>affirmed</b> <sup>[1]</sup> 32:21	14,17 <b>6</b> :25 <b>7</b> :6,8,11,22,23 <b>9</b> :14 <b>10</b> :	<b>bearing</b> <sup>[1]</sup> 23:6
<b>6</b>	<b>aftermarket</b> <sup>[1]</sup> 10:25	20 <b>15</b> :20 <b>21</b> :2,5,7,9,10,11 <b>22</b> :4 <b>24</b> :	<b>became</b> <sup>[1]</sup> 56:12
<b>61</b> <sup>[1]</sup> 2:14	<b>agency</b> <sup>[2]</sup> 16:3 <b>39</b> :14	2 <b>25</b> :1,9 <b>28</b> :6 <b>29</b> :17 <b>31</b> :1,7,18,18,	<b>become</b> <sup>[1]</sup> 12:2
<b>7</b>	<b>agent</b> <sup>[2]</sup> 16:20 <b>55</b> :18	19 <b>32</b> :11,15,19,24 <b>33</b> :1,3 <b>34</b> :5,22	<b>becomes</b> <sup>[3]</sup> 38:25 <b>50</b> :11,12
<b>70</b> <sup>[3]</sup> 41:10 <b>43</b> :2,10	<b>ago</b> <sup>[1]</sup> 52:23	35:5,14 <b>36</b> :8,15 <b>37</b> :12,14 <b>38</b> :10	<b>beef</b> <sup>[1]</sup> 49:6
<b>77</b> <sup>[1]</sup> 24:21	<b>agree</b> <sup>[4]</sup> 14:3 <b>31</b> :3 <b>38</b> :24 <b>41</b> :23	40:19,19 <b>41</b> :2,5,22 <b>43</b> :11 <b>45</b> :20	<b>beg</b> <sup>[1]</sup> 50:18
<b>8</b>	<b>agreed</b> <sup>[1]</sup> 7:12	46:16,21 <b>47</b> :3,17,17,25 <b>48</b> :13,16	<b>begin</b> <sup>[4]</sup> 11:15 <b>14</b> :9 <b>20</b> :7 <b>61</b> :22
<b>8</b> <sup>[1]</sup> 10:16	<b>agreeing</b> <sup>[1]</sup> 45:3	50:8 <b>51</b> :4 <b>52</b> :8,18 <b>53</b> :10 <b>54</b> :6,19	<b>behalf</b> <sup>[8]</sup> 1:19,25 2:4,11,14 <b>3</b> :8 <b>32</b> :
<b>80</b> <sup>[1]</sup> 11:2	<b>agreement</b> <sup>[1]</sup> 62:23	60:19,24 <b>61</b> :8 <b>62</b> :23 <b>63</b> :1	8 <b>61</b> :19
<b>9</b>	<b>agreements</b> <sup>[1]</sup> 63:5	<b>Apple's</b> <sup>[15]</sup> 20:22 <b>21</b> :5,19,23 <b>31</b> :8,	<b>behavior</b> <sup>[2]</sup> 31:15 <b>60</b> :11
<b>9</b> <sup>[1]</sup> 56:9	<b>agrees</b> <sup>[1]</sup> 7:4	11,14 <b>32</b> :13 <b>34</b> :11 <b>36</b> :6 <b>43</b> :3 <b>47</b> :	<b>behind</b> <sup>[1]</sup> 60:16
	<b>Ah</b> <sup>[1]</sup> 50:15	23 <b>53</b> :7 <b>55</b> :17 <b>61</b> :4	<b>believe</b> <sup>[2]</sup> 14:22 <b>49</b> :20
	<b>ahead</b> <sup>[1]</sup> 47:1	<b>application</b> <sup>[1]</sup> 20:13	<b>belongs</b> <sup>[1]</sup> 18:16
	<b>AL</b> <sup>[1]</sup> 1:6	<b>applications</b> <sup>[1]</sup> 53:12	<b>benefits</b> <sup>[1]</sup> 43:16
	<b>Alcoa</b> <sup>[3]</sup> 29:7,9 <b>44</b> :6	<b>applied</b> <sup>[1]</sup> 18:24	<b>best</b> <sup>[2]</sup> 15:17 <b>54</b> :17
	<b>ALITO</b> <sup>[14]</sup> 14:25 <b>15</b> :22 <b>17</b> :1,17 <b>37</b> :	<b>applies</b> <sup>[1]</sup> 52:15	<b>better</b> <sup>[2]</sup> 17:23 <b>64</b> :18
	22 <b>38</b> :1,4,7 <b>52</b> :1 <b>53</b> :1,14,15 <b>54</b> :13	<b>apply</b> <sup>[5]</sup> 13:18 <b>30</b> :6,7 <b>33</b> :7 <b>51</b> :25	<b>between</b> <sup>[20]</sup> 5:9,17 <b>16</b> :20 <b>21</b> :1,18

## Official - Subject to Final Review

<p>28:20,22 30:17 36:19 39:3,5,11 41:25 42:12,18 50:12 51:4 52:17 54:4 64:16 beyond [1] 3:21 bid [2] 26:2,6 bidders [1] 26:4 Bill [4] 8:22 11:10,11 28:18 bit [1] 13:4 block [1] 6:2 bloody [1] 45:1 blue [2] 56:8,22 board [1] 30:6 boats [1] 11:17 both [7] 8:16 13:12,14 25:2 34:23 48:22 63:5 bottom [2] 20:10 53:25 bought [6] 8:23,24 31:1 47:3 50:9, 10 break [1] 33:21 BREYER [20] 7:15,23 8:11,14,19 9: 19 10:8 11:3,9 13:19 28:16,25 29: 9,15,23 30:2,10 44:4,21 45:7 Brick [49] 3:17 4:2,22 6:1 7:14 8:7, 10 13:2,7,10,12,17,25 14:5,14 15: 2,10 16:16 17:2,4,10,10,16 18:6 20:10 23:4,11,18 25:11,14 30:6,8, 14 32:22 33:4,12,14 39:9,20 40:2, 17 41:3 48:18,21 49:6,11,18 54:3 64:12 brick-and-mortar [1] 65:11 brief [12] 17:3 49:5 54:17 56:8,9, 22 59:2 60:22 62:10,12 63:24 64: 4 briefing [1] 18:7 bright [1] 49:8 bright-line [10] 32:22 33:4,11,15 39:10 40:19 49:18 51:21,24 52:12 bringing [1] 30:7 broad [1] 23:16 brought [2] 56:7 57:5 brunt [1] 23:7 build [1] 17:9 building [1] 17:1 built [2] 17:16 23:23 bunch [1] 40:13 burden [1] 44:10 buy [12] 11:20 27:5 34:10 37:7 40: 22 48:5 55:4,6,10 61:2,3,4 buyer [6] 4:5,9,18,23 39:11 43:22 buyers [2] 4:11 45:11 buying [8] 4:13 13:22 31:8 32:13 37:8 47:17 50:24 60:23 buys [5] 8:22 11:10,11,12 28:18</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p>calculate [1] 58:21 calculation [1] 15:6 California [2] 1:18 63:7 called [2] 62:5,6 came [1] 1:12 candid [1] 59:17 cannot [3] 16:6 34:10 60:19 card [1] 21:6 carve [1] 60:3</p>	<p>Case [55] 3:4,16 4:17,23 6:1 9:2,7 10:16,18,24 11:4 13:24 14:6,21 15:6,18 18:8 22:21,23 25:20 29: 24 33:12,18,22 38:1,5,16 39:19 41:3 44:6,11 45:8 49:4,5,13 52:21 53:24 54:11 55:2 59:10 60:10 61: 23 62:16,21 63:2,11,15,18,19 64:2, 14 65:9,12,18,19 cases [7] 13:12 19:9 23:20,21,21 60:8 65:12 caught [1] 60:15 causal [1] 3:18 cause [14] 19:1 20:14 21:17,24,25 23:23 26:23 30:15,23 32:18 50:16, 20,22,24 caused [1] 60:16 causes [1] 3:14 cent [11] 24:10 25:16 26:17,19 41: 25 42:2 43:3 46:18 56:10 58:14 59:23 cents [22] 24:15,21,21,23 36:14 41: 22,22,23 42:18,19 43:2,9,9,11,17, 18,24 55:21 56:8 57:5,11 59:24 certain [1] 54:15 Certainly [1] 7:15 chain [10] 3:19 13:8,15,21 14:20 33:21 35:7,7 48:3 61:5 chains [1] 14:6 change [8] 3:23,24 12:23,24,25 32: 1,3 33:6 changed [1] 18:14 changes [2] 25:21 63:12 characterized [1] 53:18 charge [7] 11:25 22:9 24:11,21 29: 10 36:13 45:1 charged [1] 5:8 charges [1] 3:13 charging [3] 21:11 28:10 41:22 cheaper [1] 6:17 chew [2] 40:14,16 CHIEF [22] 3:3,9 19:24 20:5 32:4,9 34:2,13 35:2,16,22,25 36:3,6,17 43:19 55:25 56:4 61:1,15,20 65: 17 choice [1] 22:19 chooses [1] 5:11 Circuit [1] 7:12 Circuit's [1] 53:17 claim [20] 7:20,20 23:9 27:19 31:4, 16 35:17,19,24 36:7 37:24 42:9, 10,11 43:20 52:5 53:3,17 64:5,6 claiming [3] 6:13,16 33:25 claims [3] 19:5 63:24 65:16 clarity [1] 54:16 class [1] 59:11 classic [2] 47:5 65:9 Clayton [3] 32:19 60:5,17 clear [5] 51:17 56:12 59:5 60:7 62: 11 clearly [2] 7:3 52:6 clerks [1] 44:1 closed [4] 6:8,9,25 27:6 colleagues [1] 13:6 collect [2] 8:2,6</p>	<p>collected [1] 47:9 collecting [1] 53:11 collects [1] 7:11 come [3] 21:10 49:8 56:17 comes [3] 34:14 45:9 50:8 commission [28] 3:13,19,21 5:3,8, 20 9:10,11 11:22,25 12:15 21:13 25:10 28:11,15,23 30:19 37:1,2 42:21 43:1,4,7,14 46:16 61:25 62: 4 65:7 common [1] 5:5 community [1] 16:6 companies [1] 16:8 Company [4] 11:16 12:7 45:25 52: 22 compelled [1] 54:2 competition [1] 55:11 competitive [21] 3:22 12:19,20 29: 10,19 32:16 35:11 38:22 41:21 42: 15,22 43:1,10,14 44:25 45:18 51: 3 58:12,25 61:10,12 competitively [1] 51:2 competitors [1] 11:18 complain [5] 45:10 47:23 51:22 52:5 54:10 complainant [1] 63:16 complaint [8] 10:15 25:19 53:8,9 56:2 57:1 61:1 62:1 completely [2] 14:3 18:18 complicated [1] 18:5 complication [1] 14:12 computer [1] 60:25 conceded [1] 5:6 concedes [1] 46:9 concern [1] 63:19 concerns [1] 53:1 concluded [1] 7:16 concrete [1] 6:2 conduct [2] 21:19 53:10 conflict [1] 9:4 conflicts [3] 8:7,13 9:6 confronted [1] 14:17 confusion [1] 35:4 Congress [1] 18:13 connects [1] 28:7 constitutes [1] 52:14 constraining [1] 57:17 constraint [1] 36:13 constraints [1] 61:9 consumer [16] 3:19 9:25 12:22 21: 2 22:15 31:3,13,13 35:8 36:24 41: 24 43:23 46:23 50:9,12 51:20 consumer's [1] 46:19 consumers [24] 3:15,23 9:10 10:4 11:24 20:20 21:21 22:21 23:1 25: 5 26:17,19 28:2,12,24 34:10 35:7 44:18 46:4 49:4,5 52:7 57:23 63:5 context [1] 19:4 contract [6] 4:12 5:8 7:4 16:23 45: 13 55:19 contracts [3] 40:24 48:13 49:16 contractual [6] 16:19 17:5 39:11, 17 40:22 61:9 contrary [2] 55:17 64:1</p>	<p>contribute [1] 62:17 control [6] 25:22 48:7 50:16,19,21 51:5 controls [1] 28:6 controversial [2] 18:5,15 core [1] 35:4 correct [9] 10:11,14 31:4 37:20 40: 3 44:20 51:13 58:1,7 correctly [1] 45:5 couldn't [1] 56:13 counsel [4] 19:25 32:5 61:16 65: 18 course [1] 60:4 COURT [36] 1:1,13 3:10 9:13 13:1 14:15,22 17:3 18:20,23,24 20:6, 14 23:19 32:10,20 33:11,14 34:8 38:17 40:10 41:20 45:9 49:10 51: 16,20,25 53:8,13 56:22 57:8 60:7 63:15 64:25 65:4,13 Court's [10] 3:16 8:16 14:24 15:4, 4,6,13 32:17 62:21 64:14 courts [2] 19:18 53:4 create [2] 45:14 47:1 created [2] 18:20,23 credit [1] 21:6 curiae [3] 1:22 2:8 20:3 curious [1] 40:6 customer [4] 5:14,15 6:4 7:9</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p>D.C [3] 1:9,21,24 damage [4] 9:15 19:8 43:23 60:16 damages [50] 3:11,20,24 4:2 5:7 7: 7 8:3,6,17 19:2 20:16 23:24 26:25 27:15,20,21 29:16 33:2,25 34:18, 19 35:9,12 36:18,22 37:16 38:16, 18 42:24 43:5,7,8,13 44:15 58:1,5, 6,11,15,22 60:3,5,13,17 62:3,8,13, 18 64:23 65:15 danger [1] 48:12 DANIEL [5] 1:18 2:3,13 3:7 61:18 DAVID [3] 1:24 2:10 32:7 day [1] 56:15 dealt [1] 19:3 decide [2] 20:21 28:13 decided [1] 65:13 decides [1] 49:10 deciding [1] 14:4 decision [8] 5:19 8:16 12:25 15:5 20:19 22:1 23:8 26:21 decisions [2] 3:18 9:17 decried [1] 16:11 deducted [1] 5:10 defendants [1] 33:19 defense [3] 14:10,13,16 defenses [1] 8:17 Delaware [1] 54:3 deny [1] 33:5 Department [1] 1:21 depend [4] 9:19 39:16 58:14 59: 14 depends [2] 39:18 42:16 described [1] 10:24 designed [2] 60:6,17</p>
---	--	---	---

## Official - Subject to Final Review

<p><b>deter</b> <sup>[2]</sup> 60:6,18  <b>determination</b> <sup>[1]</sup> 12:13  <b>deterrence</b> <sup>[1]</sup> 60:9  <b>developer</b> <sup>[35]</sup> 5:10,18,19 7:4,10  16:6 31:1,2,9 37:5 42:24 43:2,5,6,  8,9,17,20 45:21 46:11,22 47:10,11  50:3,4,6,8,13,25 51:1 55:7,22 56:  13 57:12 65:8  <b>developer's</b> <sup>[1]</sup> 42:8  <b>developers</b> <sup>[22]</sup> 3:13,14,22,24 4:  12,25 5:1,9 9:17 10:3 15:19 24:5  25:3 27:19 34:18 35:19 55:18 63:  5 64:3,6,7,16  <b>developers'</b> <sup>[2]</sup> 3:17 36:9  <b>dictate</b> <sup>[2]</sup> 25:2,4  <b>difference</b> <sup>[1]</sup> 12:9 24:2 42:12,17  <b>differences</b> <sup>[4]</sup> 42:20  <b>different</b> <sup>[20]</sup> 4:11 6:8 14:1 28:17  35:24 36:14,19,22 37:17 43:20,25  44:2,14,15 45:14,20,23 46:14 48:  2 49:12  <b>differential</b> <sup>[1]</sup> 41:25  <b>difficulties</b> <sup>[1]</sup> 14:11  <b>direct</b> <sup>[24]</sup> 8:25 11:11 15:15,15 17:  15,18,20 19:18,19 21:24,25 30:23  33:5,10,15 36:15 39:3 46:10 47:  13,16 49:7 50:24 59:2,9  <b>directed</b> <sup>[2]</sup> 32:11,24  <b>directly</b> <sup>[12]</sup> 21:5 31:18 32:19 33:  23 47:22 48:14 50:3,25 51:19 52:  17 54:8 55:7  <b>disaggregating</b> <sup>[1]</sup> 39:6  <b>disagree</b> <sup>[3]</sup> 18:18 27:24 36:5  <b>disallows</b> <sup>[1]</sup> 8:18  <b>discount</b> <sup>[1]</sup> 55:6  <b>discussed</b> <sup>[2]</sup> 13:12 33:13  <b>dismiss</b> <sup>[1]</sup> 53:7  <b>disputes</b> <sup>[1]</sup> 16:1  <b>distinction</b> <sup>[1]</sup> 54:4  <b>distinguish</b> <sup>[1]</sup> 49:22  <b>distinguishing</b> <sup>[1]</sup> 39:19  <b>distort</b> <sup>[2]</sup> 35:6 49:17  <b>distorted</b> <sup>[1]</sup> 36:8  <b>distribution</b> <sup>[10]</sup> 4:14 9:8,21 10:2,  9,17,18,25 12:7 53:23  <b>distributor</b> <sup>[4]</sup> 16:21 54:6,7 60:20  <b>district</b> <sup>[7]</sup> 9:13 19:18 53:8,13 63:  7 64:25 65:4  <b>divide</b> <sup>[1]</sup> 44:16  <b>doctrinally</b> <sup>[1]</sup> 49:10  <b>doctrine</b> <sup>[5]</sup> 3:17 4:3 8:18 18:6,20  <b>doing</b> <sup>[4]</sup> 31:14 47:8 48:17 51:14  <b>done</b> <sup>[2]</sup> 17:12 25:12  <b>doorstep</b> <sup>[1]</sup> 64:15  <b>double</b> <sup>[1]</sup> 17:15  <b>doubt</b> <sup>[1]</sup> 5:1  <b>down</b> <sup>[3]</sup> 8:5 26:16,16  <b>dramatically</b> <sup>[1]</sup> 6:7  <b>drop</b> <sup>[1]</sup> 22:24  <b>dropped</b> <sup>[1]</sup> 46:16  <b>duplicative</b> <sup>[4]</sup> 19:4,11,17 63:21</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>e-commerce</b> <sup>[3]</sup> 52:25 60:20 61:7</p>	<p><b>each</b> <sup>[2]</sup> 37:13,13  <b>earned</b> <sup>[1]</sup> 44:13  <b>easily</b> <sup>[1]</sup> 32:23  <b>easy</b> <sup>[3]</sup> 29:11,21 60:13  <b>economic</b> <sup>[7]</sup> 15:3,5 16:17 17:6  39:21 41:17 64:24  <b>economically</b> <sup>[2]</sup> 55:3 57:21  <b>economics</b> <sup>[7]</sup> 16:23 33:16 39:18  40:25 41:1 49:21 65:14  <b>effect</b> <sup>[1]</sup> 57:20  <b>effective</b> <sup>[1]</sup> 15:7  <b>efficient</b> <sup>[2]</sup> 15:7,16  <b>effort</b> <sup>[1]</sup> 9:12  <b>efforts</b> <sup>[1]</sup> 18:13  <b>eight</b> <sup>[1]</sup> 43:18  <b>either</b> <sup>[4]</sup> 10:24 16:3 22:19 26:15  <b>elevation</b> <sup>[1]</sup> 55:15  <b>elsewhere</b> <sup>[1]</sup> 62:6  <b>emphasis</b> <sup>[1]</sup> 8:15  <b>End</b> <sup>[5]</sup> 8:6 24:19 44:10 54:22 55:  13  <b>enforce</b> <sup>[1]</sup> 17:23  <b>engaged</b> <sup>[3]</sup> 21:8 23:20 53:10  <b>engaging</b> <sup>[1]</sup> 47:18  <b>enormous</b> <sup>[1]</sup> 29:3  <b>enormously</b> <sup>[1]</sup> 18:5  <b>entire</b> <sup>[2]</sup> 24:25 37:1  <b>entirely</b> <sup>[3]</sup> 13:25 37:16 62:9  <b>entitled</b> <sup>[1]</sup> 59:12  <b>ESQ</b> <sup>[6]</sup> 1:18,24 2:3,6,10,13  <b>essentially</b> <sup>[2]</sup> 25:13 52:11  <b>ET</b> <sup>[1]</sup> 1:6  <b>evades</b> <sup>[1]</sup> 49:18  <b>evaluation</b> <sup>[1]</sup> 15:13  <b>even</b> <sup>[5]</sup> 7:12,16 51:16 60:24 64:7  <b>event</b> <sup>[1]</sup> 25:8  <b>Everything</b> <sup>[2]</sup> 8:9 13:1  <b>evidence</b> <sup>[2]</sup> 16:5 45:2  <b>exactly</b> <sup>[2]</sup> 52:1 60:2  <b>Excuse</b> <sup>[2]</sup> 4:7 64:6  <b>exercising</b> <sup>[2]</sup> 12:12 51:5  <b>exist</b> <sup>[1]</sup> 37:18  <b>existed</b> <sup>[2]</sup> 38:22 54:25  <b>existence</b> <sup>[1]</sup> 39:10  <b>expand</b> <sup>[1]</sup> 33:3  <b>experience</b> <sup>[1]</sup> 61:23  <b>experts</b> <sup>[2]</sup> 58:11 59:18  <b>explained</b> <sup>[1]</sup> 48:19  <b>explaining</b> <sup>[1]</sup> 27:24  <b>exploit</b> <sup>[1]</sup> 28:9  <b>exploration</b> <sup>[1]</sup> 48:11  <b>explored</b> <sup>[1]</sup> 59:4  <b>extend</b> <sup>[1]</sup> 17:4  <b>extent</b> <sup>[3]</sup> 25:23,23 34:21  <b>extra</b> <sup>[1]</sup> 43:17  <b>extract</b> <sup>[4]</sup> 21:13 38:12,19 52:23  <b>extracted</b> <sup>[1]</sup> 29:18  <b>extracting</b> <sup>[2]</sup> 21:12 59:7  <b>extracts</b> <sup>[1]</sup> 35:15</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> <sup>[1]</sup> 22:24  <b>fact</b> <sup>[9]</sup> 16:7 17:11 24:17,20 25:21  29:17 47:3 60:24 63:4</p>	<p><b>factors</b> <sup>[1]</sup> 42:16  <b>facts</b> <sup>[2]</sup> 13:10,11  <b>factual</b> <sup>[2]</sup> 14:20,23  <b>fair</b> <sup>[1]</sup> 18:23  <b>faith</b> <sup>[1]</sup> 38:20  <b>fanciful</b> <sup>[2]</sup> 16:12,12  <b>farmers</b> <sup>[3]</sup> 11:20,21,21  <b>feature</b> <sup>[1]</sup> 61:7  <b>federal</b> <sup>[1]</sup> 16:2  <b>few</b> <sup>[1]</sup> 18:3  <b>fewer</b> <sup>[1]</sup> 37:8  <b>fight</b> <sup>[2]</sup> 64:13,16  <b>figure</b> <sup>[3]</sup> 27:14 52:4,19  <b>final</b> <sup>[2]</sup> 22:18 32:2  <b>finally</b> <sup>[1]</sup> 65:5  <b>find</b> <sup>[2]</sup> 9:2 20:24  <b>finish</b> <sup>[2]</sup> 31:21 52:10  <b>first</b> <sup>[27]</sup> 3:4 4:5,8,23 5:2,14 7:1,3  9:9 10:14 14:9 18:4,21 19:2,13 20:  17,18 23:7,25 24:10 25:16,18 32:  22 33:9 49:2 57:9 61:23  <b>flip</b> <sup>[1]</sup> 33:22  <b>floor</b> <sup>[1]</sup> 18:15  <b>flourish</b> <sup>[2]</sup> 61:11,12  <b>flow</b> <sup>[1]</sup> 7:13  <b>focuses</b> <sup>[1]</sup> 64:23  <b>forced</b> <sup>[1]</sup> 8:5  <b>foreclosing</b> <sup>[1]</sup> 55:23  <b>foresight</b> <sup>[1]</sup> 29:4  <b>form</b> <sup>[11]</sup> 28:12,24 30:17,19 41:12  45:12,14 47:18 49:25 51:12 55:20  <b>formal</b> <sup>[1]</sup> 16:20  <b>formalistic</b> <sup>[4]</sup> 14:5 40:22 64:18,  20  <b>formalities</b> <sup>[2]</sup> 16:19 39:17  <b>formality</b> <sup>[1]</sup> 17:6  <b>forms</b> <sup>[1]</sup> 16:23  <b>forth</b> <sup>[1]</sup> 4:16  <b>forum</b> <sup>[2]</sup> 63:1,16  <b>found</b> <sup>[2]</sup> 14:15 61:8  <b>foundational</b> <sup>[1]</sup> 18:25  <b>framing</b> <sup>[1]</sup> 14:14  <b>Francisco</b> <sup>[34]</sup> 1:18,20 2:6 20:1,2,  5 21:15 22:7,11,16 23:3,15,17 24:  7,12,22 25:7,15 26:9,12 27:2,7,13,  17,23 29:8,14,22 30:1,4,12 31:5,  10,17  <b>FREDERICK</b> <sup>[53]</sup> 1:24 2:10 32:6,7,  9 34:7 35:2,20,23 36:2,5,21 37:20,  25 38:3,9,23 40:7,11,15 41:1,9,13,  18 42:3,6 44:20 45:6,24 47:15 48:  23 49:1 50:1,18,21 51:9,13 53:13,  20 55:1,14 56:3,19,23 57:3,10,23  58:2,4,8,15,18 59:15  <b>free</b> <sup>[3]</sup> 50:7 59:23 63:2  <b>Fruit</b> <sup>[2]</sup> 11:16 12:2  <b>full</b> <sup>[1]</sup> 23:7  <b>fully</b> <sup>[1]</sup> 59:17  <b>function</b> <sup>[9]</sup> 8:8,21 10:2,10 45:12,  14 47:19 59:6  <b>fundamental</b> <sup>[2]</sup> 32:2 54:4  <b>funds</b> <sup>[1]</sup> 7:12  <b>further</b> <sup>[2]</sup> 40:1 48:11  <b>fuzzy</b> <sup>[1]</sup> 52:12</p>	<p style="text-align: center;"><b>G</b></p> <p><b>gas</b> <sup>[2]</sup> 51:18,22  <b>GEN</b> <sup>[3]</sup> 1:20 2:6 20:2  <b>General</b> <sup>[40]</sup> 1:20 19:7,22 20:1,5,  23 21:15 22:7,11,16 23:3,15,17  24:2,7,12,22 25:7,15 26:9,12,24  27:2,7,13,17,23 29:8,14,22 30:1,4,  12 31:5,10,17 46:1,9,9 47:2  <b>generally</b> <sup>[2]</sup> 5:25 20:14  <b>gets</b> <sup>[9]</sup> 19:9,13,16 23:9 35:3 45:9  47:20 51:22 57:12  <b>GINSBURG</b> <sup>[7]</sup> 4:4,8,21 18:19 62:  20 63:8,14  <b>give</b> <sup>[6]</sup> 12:4,5 24:8 43:17 47:11  49:23  <b>given</b> <sup>[2]</sup> 17:11 22:4  <b>gives</b> <sup>[1]</sup> 46:21  <b>good-faith</b> <sup>[1]</sup> 10:19  <b>goods</b> <sup>[1]</sup> 4:19  <b>GORSUCH</b> <sup>[32]</sup> 16:14,25 17:22 18:  1 37:21 38:23 40:8,12,21 41:7,11,  14 42:1,4 44:12 45:13 46:25 47:  18 48:9,24 49:2,19 50:15,19 56:  14,17,20,21,24 57:3,6,8  <b>Gorsuch's</b> <sup>[2]</sup> 19:10 55:20  <b>got</b> <sup>[4]</sup> 23:5 42:7 44:17 45:4  <b>gotten</b> <sup>[1]</sup> 18:14  <b>granting</b> <sup>[1]</sup> 53:7  <b>great</b> <sup>[1]</sup> 11:16  <b>grief</b> <sup>[1]</sup> 35:20  <b>gripe</b> <sup>[1]</sup> 37:14  <b>grocery</b> <sup>[1]</sup> 48:3  <b>ground</b> <sup>[1]</sup> 5:6  <b>guess</b> <sup>[1]</sup> 39:8</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>hand</b> <sup>[5]</sup> 21:19,21 28:8 29:11 54:5  <b>Hanover</b> <sup>[8]</sup> 13:1 14:9 16:16 19:15  20:10 23:5 30:9 54:2  <b>happen</b> <sup>[3]</sup> 51:4 52:21 59:21  <b>happened</b> <sup>[3]</sup> 12:6 15:12 25:10  <b>happening</b> <sup>[2]</sup> 48:8 59:6  <b>happens</b> <sup>[3]</sup> 16:9,13 19:17  <b>hard</b> <sup>[4]</sup> 31:24 33:7 39:19 49:22  <b>harm</b> <sup>[3]</sup> 23:6 28:2,23  <b>harmed</b> <sup>[8]</sup> 22:21,24 23:2 25:24  28:12 34:17,19 46:6  <b>head</b> <sup>[1]</sup> 60:2  <b>hear</b> <sup>[1]</sup> 3:3  <b>heard</b> <sup>[2]</sup> 49:23 63:22  <b>held</b> <sup>[2]</sup> 51:16,20  <b>help</b> <sup>[4]</sup> 39:9 40:25 48:21,22  <b>higher</b> <sup>[17]</sup> 12:1 21:21,24,25 27:9  28:3,4,13,24 29:10,12,18 30:18  35:10 36:25 37:3 46:4  <b>home</b> <sup>[2]</sup> 43:2 63:1  <b>honest</b> <sup>[1]</sup> 60:2  <b>Honor</b> <sup>[9]</sup> 21:16 23:3,15 26:13 30:  12 31:5,22 40:16 59:15  <b>house</b> <sup>[2]</sup> 26:1,3  <b>huge</b> <sup>[3]</sup> 17:13 59:23,24  <b>hurts</b> <sup>[1]</sup> 36:9  <b>hypothetical</b> <sup>[12]</sup> 12:18 19:11 28:</p>
--	--	--	---

## Official - Subject to Final Review

18 31:6 41:19 42:23 43:24 46:7, 21 47:16,24 50:2 <b>hypotheticals</b> <sup>[1]</sup> 59:4	<b>interrupt</b> <sup>[2]</sup> 8:20 51:11 <b>intuitive</b> <sup>[1]</sup> 20:24 <b>involved</b> <sup>[1]</sup> 14:2 <b>iOS</b> <sup>[1]</sup> 11:1 <b>iPhone</b> <sup>[14]</sup> 21:4 28:8 32:12,14,17 35:8 36:15 52:17 53:11 54:7,20 61:6,13 62:24 <b>irrelevant</b> <sup>[4]</sup> 37:6 45:25 46:1 57: 14 <b>irrespective</b> <sup>[1]</sup> 43:22 <b>isn't</b> <sup>[4]</sup> 28:20 31:19 48:20 49:25 <b>issue</b> <sup>[7]</sup> 6:11 7:14 18:5,16 21:17, 18 56:10 <b>issues</b> <sup>[1]</sup> 45:13 <b>itself</b> <sup>[5]</sup> 12:15 13:22,24 16:7 32:3 11	<b>law</b> <sup>[5]</sup> 9:3 40:23,24 44:1 62:21 <b>laws</b> <sup>[1]</sup> 17:24 <b>leads</b> <sup>[1]</sup> 46:4 <b>learned</b> <sup>[2]</sup> 9:3 29:11 <b>least</b> <sup>[2]</sup> 7:18 52:22 <b>led</b> <sup>[1]</sup> 54:15 <b>left</b> <sup>[1]</sup> 20:7 <b>legal</b> <sup>[1]</sup> 63:13 <b>lens</b> <sup>[1]</sup> 54:12 <b>less</b> <sup>[2]</sup> 6:22 44:8 <b>level</b> <sup>[3]</sup> 3:22 19:20 44:25 <b>Lexmark</b> <sup>[1]</sup> 23:21 <b>liability</b> <sup>[1]</sup> 62:17 <b>lie</b> <sup>[2]</sup> 31:4,16 <b>life</b> <sup>[3]</sup> 29:11,21 64:2 <b>light</b> <sup>[1]</sup> 15:12 <b>likely</b> <sup>[2]</sup> 27:20 59:21 <b>limit</b> <sup>[1]</sup> 61:9 <b>limiting</b> <sup>[1]</sup> 11:1 <b>line</b> <sup>[2]</sup> 49:9 53:6 <b>lines</b> <sup>[1]</sup> 16:15 <b>link</b> <sup>[1]</sup> 33:21 <b>links</b> <sup>[1]</sup> 3:19 <b>literally</b> <sup>[1]</sup> 16:13 <b>litigation</b> <sup>[6]</sup> 14:13 15:7 16:1,5 56: 18 63:6 <b>little</b> <sup>[1]</sup> 6:22 <b>live</b> <sup>[2]</sup> 10:3,5 <b>long</b> <sup>[3]</sup> 13:20 17:24 46:2 <b>look</b> <sup>[6]</sup> 7:19 15:18 26:1 42:7 53: 25 58:22 <b>looking</b> <sup>[2]</sup> 21:1 23:13 <b>loop</b> <sup>[4]</sup> 6:8,9,25 27:6 <b>lost</b> <sup>[4]</sup> 37:10,17 43:21 63:24 <b>lot</b> <sup>[7]</sup> 11:4,6 24:20 27:9 35:4 54:14 59:3 <b>low</b> <sup>[1]</sup> 11:22 <b>low-cost</b> <sup>[1]</sup> 24:17 <b>lower</b> <sup>[6]</sup> 7:25 26:16 36:14 53:4 55: 10 61:14	<b>mathematical</b> <sup>[1]</sup> 19:12 <b>matter</b> <sup>[7]</sup> 1:12 16:2,8 24:14 29:16 59:5 63:11 <b>matters</b> <sup>[1]</sup> 49:17 <b>mean</b> <sup>[12]</sup> 8:20 13:5 20:24 21:4,14 37:11 45:8 48:11 53:6 55:18 56: 24,25 <b>means</b> <sup>[1]</sup> 23:11 <b>meant</b> <sup>[1]</sup> 56:13 <b>measure</b> <sup>[6]</sup> 27:15,21 35:12 36:18 37:17 38:15 <b>measuring</b> <sup>[1]</sup> 26:25 <b>mechanism</b> <sup>[3]</sup> 13:16 14:2 16:18 <b>meet</b> <sup>[1]</sup> 40:18 <b>merits</b> <sup>[1]</sup> 63:23 <b>middleman</b> <sup>[5]</sup> 41:3,4,4 52:15,16 <b>might</b> <sup>[11]</sup> 10:1 16:16 24:13 34:21 36:13,25 37:1 39:2,4 41:16 62:16 <b>mind</b> <sup>[1]</sup> 17:2 <b>minimal</b> <sup>[1]</sup> 5:12 <b>minutes</b> <sup>[1]</sup> 61:17 <b>miss</b> <sup>[1]</sup> 8:21 <b>missed</b> <sup>[1]</sup> 53:14 <b>Mister</b> <sup>[1]</sup> 37:21 <b>misunderstood</b> <sup>[1]</sup> 53:5 <b>modify</b> <sup>[1]</sup> 33:4 <b>moment</b> <sup>[1]</sup> 49:20 <b>Monday</b> <sup>[1]</sup> 1:10 <b>money</b> <sup>[9]</sup> 41:2,2,5 45:1,15 46:22 47:9,19 52:8 <b>monopolist</b> <sup>[17]</sup> 7:20,21 8:2,23,25 11:10,12 12:2 13:22,23 21:11 25: 1 30:16,22 35:15 38:13 60:9 <b>monopolist's</b> <sup>[2]</sup> 30:18,22 <b>monopolistic</b> <sup>[3]</sup> 21:20,23 31:14 <b>monopolists</b> <sup>[2]</sup> 17:19 60:14 <b>monopolization</b> <sup>[4]</sup> 3:12 9:7,20, 23 <b>monopolized</b> <sup>[1]</sup> 48:3 <b>monopolizes</b> <sup>[2]</sup> 6:3 10:21 <b>monopolizing</b> <sup>[1]</sup> 38:11 <b>monopoly</b> <sup>[50]</sup> 6:2,21 10:1,2,4,9 28:10 29:13,18 32:14,24 34:9,12 35:5 36:12 38:19,25 39:24 41:16, 25 42:13 43:4,12,16 44:7,13,16,23 45:3,10,11 46:3,12 48:1,6 51:5 52: 24,25 53:23 54:19 55:4 56:5 58: 19,23 59:7 60:11 61:4,6 62:4,5 <b>monopsony</b> <sup>[1]</sup> 63:25 <b>morning</b> <sup>[2]</sup> 3:4 53:19 <b>most</b> <sup>[4]</sup> 15:16,16 24:18 64:20 <b>motion</b> <sup>[1]</sup> 53:7 <b>moved</b> <sup>[1]</sup> 47:20 <b>much</b> <sup>[2]</sup> 37:19 45:1 <b>multiple</b> <sup>[2]</sup> 55:8,9 <b>must</b> <sup>[1]</sup> 30:2		
<b>I</b> <b>i.e</b> <sup>[1]</sup> 44:24 <b>idea</b> <sup>[6]</sup> 11:17 16:10 47:25 54:15 60:4,16 <b>illegal</b> <sup>[1]</sup> 21:19 <b>Illinois</b> <sup>[49]</sup> 3:17 4:2,22 6:1 7:14 8: 7,9 13:2,7,10,11,17,25 14:4,14 15: 2,10 16:16 17:2,4,9,10,16 18:6 20: 10 23:4,11,18 25:11,14 30:5,8,14 32:22 33:4,12,14 39:9,20 40:2,17 41:3 48:18,21 49:6,11,18 54:3 64: 11 <b>imagine</b> <sup>[1]</sup> 12:19 <b>immaterial</b> <sup>[1]</sup> 7:14 <b>implicates</b> <sup>[1]</sup> 12:25 <b>implications</b> <sup>[1]</sup> 56:11 <b>important</b> <sup>[6]</sup> 5:5 16:18 34:8 50: 16,20,22 <b>importantly</b> <sup>[1]</sup> 33:12 <b>imposed</b> <sup>[1]</sup> 35:1 <b>imposes</b> <sup>[1]</sup> 34:5 <b>INC</b> <sup>[1]</sup> 1:3 <b>incentivizing</b> <sup>[1]</sup> 48:12 <b>include</b> <sup>[2]</sup> 4:14 56:1 <b>including</b> <sup>[3]</sup> 23:20,21,24 <b>increase</b> <sup>[10]</sup> 3:15 20:21 22:1,22 28:14 34:4,5,14,25 36:1 <b>increased</b> <sup>[1]</sup> 22:25 <b>increases</b> <sup>[1]</sup> 3:21 <b>increments</b> <sup>[2]</sup> 26:2,7 <b>incur</b> <sup>[1]</sup> 35:10 <b>indeed</b> <sup>[5]</sup> 13:11 14:21 16:24 26: 10 63:17 <b>independent</b> <sup>[2]</sup> 9:16 12:12 <b>independently</b> <sup>[1]</sup> 24:6 <b>indirect</b> <sup>[5]</sup> 8:24 11:12 17:14,22 39:3 <b>indisputably</b> <sup>[1]</sup> 33:5 <b>indulge</b> <sup>[1]</sup> 41:20 <b>industry</b> <sup>[1]</sup> 29:4 <b>influencing</b> <sup>[1]</sup> 24:3 <b>information</b> <sup>[1]</sup> 21:6 <b>informs</b> <sup>[2]</sup> 55:15,16 <b>initial</b> <sup>[2]</sup> 12:14 23:6 <b>injured</b> <sup>[7]</sup> 8:1,4 12:22 20:20 23: 14 26:18,19 <b>injury</b> <sup>[8]</sup> 6:10,13,16 21:20 26:13 30:17,24 62:17 <b>inquiry</b> <sup>[1]</sup> 33:7 <b>instance</b> <sup>[3]</sup> 5:2 23:8 60:21 <b>instead</b> <sup>[6]</sup> 9:15 11:2 13:8 43:10 52:11 54:1 <b>Institute</b> <sup>[1]</sup> 18:10 <b>intellectual</b> <sup>[1]</sup> 4:15 <b>interesting</b> <sup>[1]</sup> 37:22 <b>intermediary</b> <sup>[1]</sup> 12:11 <b>intermediate</b> <sup>[3]</sup> 6:3 39:12,23 <b>intermediating</b> <sup>[1]</sup> 26:21 <b>interpret</b> <sup>[1]</sup> 23:22 <b>interpretation</b> <sup>[1]</sup> 23:19	<b>J</b> <b>JA</b> <sup>[2]</sup> 65:3,5 <b>jargon</b> <sup>[1]</sup> 11:15 <b>Jay</b> <sup>[1]</sup> 12:3 <b>Joe</b> <sup>[2]</sup> 8:22,24 <b>John</b> <sup>[1]</sup> 12:4 <b>Judge</b> <sup>[2]</sup> 16:11 64:25 <b>judicial</b> <sup>[1]</sup> 52:3 <b>jurisprudence</b> <sup>[1]</sup> 19:1 <b>Justice</b> <sup>[155]</sup> 1:21 3:3,10 4:4,8,21 5:13,22,25 6:6,12,15 7:8,15,23 8: 11,14,19 9:18,19 10:7,8,12 11:3,9 13:3,19 14:25 15:22 16:14,25 17: 1,17,22 18:1,19 19:9,24 20:5,23 22:3,6,8,13 23:1,10,16 24:1,8,13, 23 25:8 26:6,10,24 27:3,8,14,18, 25 28:5,16,25 29:9,15,23 30:2,10, 25 31:8,11 32:4,10 34:2,13 35:2, 16,22,25 36:3,6,17,23 37:21,22 38: 1,4,7,23 40:8,12,21 41:7,11,14 42: 1,4 43:19 44:4,11,21 45:6,13,19 46:7,24,25 47:2,18,24 48:9,10,24 49:2,19 50:15,19 51:8,10 52:1,9 53:1,14,15 54:13,21 55:2,12,20,25 56:5,14,16,17,20,21,24 57:3,6,7,8, 22,25 58:3,7,13,17 59:10 61:2,15, 21 62:20 63:8,14 65:17	<b>K</b> <b>KAGAN</b> <sup>[19]</sup> 9:18 10:7,13 13:3 20: 23 22:6 24:1,8,13,23 25:8 26:6,10 27:25 28:5 36:23 54:21 55:2,12 <b>KAVANAUGH</b> <sup>[22]</sup> 22:3,8,13 23:1, 10,16 30:25 31:8,11 45:19 46:8 51:8,10 52:9 56:16 57:7,22,25 58: 3,7,13,17 <b>keep</b> <sup>[4]</sup> 22:20 47:25 50:5 51:21 <b>keeping</b> <sup>[1]</sup> 45:16 <b>kept</b> <sup>[1]</sup> 41:5 <b>key</b> <sup>[4]</sup> 14:4 31:23 51:1 62:2 <b>kind</b> <sup>[6]</sup> 4:1 14:2 30:13 35:3 39:13 56:14	<b>L</b> <b>lack</b> <sup>[1]</sup> 54:16 <b>largest</b> <sup>[1]</sup> 52:21 <b>last</b> <sup>[1]</sup> 54:1 <b>late</b> <sup>[1]</sup> 56:14 <b>later</b> <sup>[3]</sup> 44:18 45:3 48:16	<b>M</b> <b>made</b> <sup>[3]</sup> 4:19 52:2 60:7 <b>maintained</b> <sup>[1]</sup> 46:18 <b>maintains</b> <sup>[1]</sup> 62:3 <b>major</b> <sup>[1]</sup> 16:8 <b>maker</b> <sup>[1]</sup> 31:20 <b>maker's</b> <sup>[2]</sup> 20:19 22:1 <b>makers</b> <sup>[8]</sup> 20:21 22:18,23 25:22 26:14 28:7,13 39:5 <b>manifest</b> <sup>[1]</sup> 12:15 <b>manifests</b> <sup>[1]</sup> 9:9 <b>manipulate</b> <sup>[1]</sup> 31:24 <b>manipulation</b> <sup>[1]</sup> 64:21 <b>manner</b> <sup>[1]</sup> 65:2 <b>manufacturer</b> <sup>[3]</sup> 6:3 16:21 54:5 <b>many</b> <sup>[4]</sup> 15:18 17:11 20:8 22:5 <b>mark</b> <sup>[1]</sup> 65:8 <b>market</b> <sup>[34]</sup> 6:4 10:17,18 11:6 21: 14 25:2 29:3 32:16 34:22,24 35:6, 11,18 36:8,20 37:15 38:22 41:21 42:15,22 43:2,4,10,12,14 45:17,18 50:7 51:3 58:10,12,25 61:10,12 <b>markup</b> <sup>[5]</sup> 7:1 27:9 62:14 64:4,8	<b>N</b> <b>natural</b> <sup>[2]</sup> 51:18,22 <b>nature</b> <sup>[2]</sup> 25:5 32:3 <b>necessarily</b> <sup>[5]</sup> 3:18 10:19 19:16 29:12 35:13 <b>necessary</b> <sup>[2]</sup> 29:6 44:9 <b>need</b> <sup>[3]</sup> 39:9 42:11 61:22

## Official - Subject to Final Review

<p><b>negative</b> <sup>[1]</sup> 43:13  <b>never</b> <sup>[4]</sup> 5:21 30:22 41:2 63:22  <b>new</b> <sup>[3]</sup> 56:18 65:10,10  <b>next</b> <sup>[3]</sup> 6:3,21 26:18  <b>nine</b> <sup>[3]</sup> 41:24 43:23 61:24  <b>Ninth</b> <sup>[2]</sup> 7:12 53:16  <b>nobody</b> <sup>[1]</sup> 26:2  <b>NOEL</b> <sup>[3]</sup> 1:20 2:6 20:2  <b>noncompetitive</b> <sup>[1]</sup> 58:10  <b>None</b> <sup>[2]</sup> 15:24 16:1  <b>normally</b> <sup>[1]</sup> 16:22  <b>Northern</b> <sup>[1]</sup> 63:7  <b>nothing</b> <sup>[2]</sup> 6:23 38:8  <b>notwithstanding</b> <sup>[2]</sup> 14:1 33:16  <b>November</b> <sup>[1]</sup> 1:10  <b>nowadays</b> <sup>[1]</sup> 16:8  <b>number</b> <sup>[4]</sup> 17:13 24:20 59:23,24</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>obviously</b> <sup>[2]</sup> 34:15 49:11  <b>offensively</b> <sup>[1]</sup> 14:18  <b>often</b> <sup>[1]</sup> 29:13  <b>Okay</b> <sup>[10]</sup> 17:25 40:15 41:18 42:3, 17,22 49:1,9 50:5 53:15  <b>once</b> <sup>[1]</sup> 18:14  <b>One</b> <sup>[27]</sup> 11:5 15:22 17:16,17 21:2, 14,19 24:24 28:7,21 34:3 36:12 37:17 38:24 42:17,25 44:7,12,21, 22 45:3 49:2 52:20 54:5 62:16 64: 7,20  <b>one-by-one</b> <sup>[1]</sup> 63:1  <b>one-step</b> <sup>[1]</sup> 21:8  <b>ones</b> <sup>[3]</sup> 5:1 52:7 57:4  <b>only</b> <sup>[18]</sup> 3:11 5:6,11 12:24 17:5 20: 21 21:2,13 28:11 35:9 38:13,24 44:12 45:3 48:5 51:21 52:21 55:4  <b>open</b> <sup>[1]</sup> 61:3  <b>opening</b> <sup>[1]</sup> 53:6  <b>operates</b> <sup>[1]</sup> 22:5  <b>operating</b> <sup>[2]</sup> 48:1 50:6  <b>opinion</b> <sup>[1]</sup> 53:17  <b>opportunity</b> <sup>[2]</sup> 49:16 61:10  <b>opposition</b> <sup>[3]</sup> 62:10,12 64:5  <b>oppressed</b> <sup>[1]</sup> 16:6  <b>optimizes</b> <sup>[1]</sup> 19:20  <b>options</b> <sup>[2]</sup> 55:24 57:18  <b>oral</b> <sup>[7]</sup> 1:13 2:2,5,9 3:7 20:2 32:7  <b>order</b> <sup>[7]</sup> 18:12 20:22 22:2 28:14 44:23 49:16 53:6  <b>other</b> <sup>[25]</sup> 9:25 17:17 21:21 24:3, 25 25:12 28:8 30:16,21 32:13 34: 11,21 36:23 37:18 38:3 49:14,15 51:11 52:10 54:6,23 59:24,25 60: 21 62:15  <b>others</b> <sup>[1]</sup> 7:25  <b>out</b> <sup>[11]</sup> 6:20 20:8 22:6 25:14,18 40: 25 43:25 52:4,20 60:22 63:15  <b>outcome</b> <sup>[1]</sup> 65:15  <b>outlet</b> <sup>[1]</sup> 48:6  <b>output</b> <sup>[1]</sup> 48:7  <b>outside</b> <sup>[1]</sup> 27:6  <b>over</b> <sup>[8]</sup> 9:8 19:22 47:10,18 51:12 55:20 60:15 64:3  <b>over-charge</b> <sup>[22]</sup> 4:1 12:14 19:5,9,</p>	<p>14 21:20,23 22:2,20,23 23:7 30:8, 13,23 51:18,23 55:2,16 58:23 59: 8,13 65:9  <b>over-charged</b> <sup>[1]</sup> 56:6  <b>over-charges</b> <sup>[2]</sup> 32:20 54:20  <b>overall</b> <sup>[1]</sup> 25:22  <b>overlap</b> <sup>[1]</sup> 64:8  <b>overpaying</b> <sup>[1]</sup> 46:20  <b>overrule</b> <sup>[1]</sup> 44:5  <b>overruled</b> <sup>[1]</sup> 40:18  <b>overturn</b> <sup>[1]</sup> 48:20  <b>own</b> <sup>[2]</sup> 27:19 60:25  <b>owner</b> <sup>[3]</sup> 36:16 52:18 62:24  <b>owners</b> <sup>[6]</sup> 32:12,14,18 35:9 54:20 61:13</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>package</b> <sup>[2]</sup> 4:13,19  <b>PAGE</b> <sup>[6]</sup> 2:2 53:21,22 56:9 59:2 62:12  <b>pages</b> <sup>[1]</sup> 62:10  <b>paid</b> <sup>[11]</sup> 6:22 8:2 22:15 32:15,16 40:19 41:1,5 47:4,10 64:8  <b>paragraph</b> <sup>[2]</sup> 54:1 62:1  <b>paragraphs</b> <sup>[1]</sup> 10:15  <b>pardon</b> <sup>[1]</sup> 50:18  <b>part</b> <sup>[8]</sup> 12:14 23:5 24:18 25:20 28: 1 45:25 51:1 62:8  <b>partially</b> <sup>[2]</sup> 39:2,4  <b>particular</b> <sup>[4]</sup> 20:16 29:19 52:16 59:14  <b>particularity</b> <sup>[1]</sup> 38:18  <b>particularly</b> <sup>[1]</sup> 51:15  <b>parties</b> <sup>[1]</sup> 28:20  <b>party</b> <sup>[6]</sup> 23:6,9 30:16 31:20,21 32: 1  <b>pass</b> <sup>[2]</sup> 3:25 39:24  <b>pass-on</b> <sup>[7]</sup> 8:16 14:10,13,16,18, 19 64:23  <b>pass-through</b> <sup>[13]</sup> 13:9,16 14:2,7 16:18 19:5 20:12 25:25 26:14,20 39:21 52:14 65:15  <b>passing</b> <sup>[1]</sup> 43:11  <b>past</b> <sup>[1]</sup> 19:2  <b>patents</b> <sup>[1]</sup> 29:4  <b>patient</b> <sup>[1]</sup> 65:1  <b>pay</b> <sup>[12]</sup> 5:2 7:24 9:10 11:21 21:5 28:3,4 38:21 46:5 57:24 60:15 61: 13  <b>paying</b> <sup>[11]</sup> 28:12 36:24 37:3,19 38:21 39:1 45:15,16 50:3 52:7 55: 4  <b>payment</b> <sup>[1]</sup> 7:13  <b>pays</b> <sup>[1]</sup> 5:15  <b>penalized</b> <sup>[1]</sup> 60:10  <b>penny</b> <sup>[1]</sup> 6:23  <b>people</b> <sup>[6]</sup> 7:25 29:20 37:8,11,13 48:14  <b>PEPPER</b> <sup>[2]</sup> 1:6 3:5  <b>per</b> <sup>[1]</sup> 43:18  <b>percent</b> <sup>[68]</sup> 3:12 5:2,7,15,20 6:13, 18,18 7:1,6,9 9:9,11 11:2,22,25 12:20 14:19 19:14 22:9,14 27:4, 11,11,14,21 28:11,23 31:2,12 34:4,</p>	<p>14 35:13,13 37:1,2 38:2,5,7,10,12, 15 41:6,10 42:22 43:1,3,4,15 45: 21 46:12,17,17 47:5,12 51:17 53: 11 54:15 55:23 57:17 59:13 61:25 62:4,14,19 64:4,8,10  <b>percent-owned</b> <sup>[1]</sup> 34:11  <b>perfectly</b> <sup>[1]</sup> 60:2  <b>perhaps</b> <sup>[1]</sup> 17:11  <b>periphery</b> <sup>[1]</sup> 62:9  <b>persistent</b> <sup>[1]</sup> 65:1  <b>person</b> <sup>[4]</sup> 6:2 13:21,23 23:14  <b>perspective</b> <sup>[4]</sup> 21:7 42:8 46:19 56:4  <b>petition</b> <sup>[1]</sup> 53:21  <b>Petitioner</b> <sup>[8]</sup> 1:4,19,23 2:4,8,14 3: 8 20:4  <b>PETITIONERS</b> <sup>[1]</sup> 61:19  <b>pick</b> <sup>[1]</sup> 21:4  <b>picture</b> <sup>[3]</sup> 4:6,9,11  <b>pie</b> <sup>[1]</sup> 64:10  <b>piece</b> <sup>[2]</sup> 45:2 64:9  <b>pipeline</b> <sup>[3]</sup> 10:22 28:7,9  <b>pitch</b> <sup>[1]</sup> 18:2  <b>place</b> <sup>[3]</sup> 18:21 48:5 58:20  <b>plainly</b> <sup>[1]</sup> 40:18  <b>Plaintiff's</b> <sup>[1]</sup> 53:9  <b>plaintiffs</b> <sup>[3]</sup> 4:17 29:20 33:23  <b>plaintiffs'</b> <sup>[5]</sup> 18:9 30:17 40:8 48: 20 49:3  <b>plead</b> <sup>[1]</sup> 38:17  <b>pleaded</b> <sup>[1]</sup> 61:1  <b>pleadings</b> <sup>[3]</sup> 33:8 52:3 56:20  <b>please</b> <sup>[4]</sup> 3:10 20:6 32:10 47:1  <b>plenty</b> <sup>[1]</sup> 15:25  <b>plus</b> <sup>[1]</sup> 11:22  <b>point</b> <sup>[27]</sup> 6:24 8:21 12:8 15:14 16: 15,25 19:10,23 22:17 23:4 25:18 26:13,17,19 27:10 33:10 48:18 49: 14 51:11 52:1,10 53:16 57:10 60: 8,19,21 63:20  <b>points</b> <sup>[4]</sup> 10:12 12:21 22:6 25:16  <b>policy</b> <sup>[1]</sup> 25:17  <b>political</b> <sup>[1]</sup> 18:16  <b>portion</b> <sup>[1]</sup> 37:2  <b>posed</b> <sup>[1]</sup> 46:8  <b>posit</b> <sup>[1]</sup> 49:24  <b>position</b> <sup>[3]</sup> 15:1,17 54:16  <b>positive</b> <sup>[2]</sup> 7:5 43:6  <b>Posner</b> <sup>[1]</sup> 16:11  <b>possibilities</b> <sup>[1]</sup> 42:25  <b>possibility</b> <sup>[3]</sup> 39:22 41:15 63:22  <b>possibly</b> <sup>[1]</sup> 56:13  <b>potential</b> <sup>[4]</sup> 14:12 19:4,10 63:24  <b>Potentially</b> <sup>[3]</sup> 58:3,5 59:12  <b>power</b> <sup>[6]</sup> 21:14 29:3 44:7,24,24 46:13  <b>practices</b> <sup>[2]</sup> 29:6 44:9  <b>precedents</b> <sup>[1]</sup> 32:17  <b>precisely</b> <sup>[1]</sup> 4:1  <b>premised</b> <sup>[1]</sup> 39:10  <b>prepared</b> <sup>[2]</sup> 44:5 50:2  <b>presents</b> <sup>[1]</sup> 39:22  <b>prevent</b> <sup>[1]</sup> 32:12  <b>price</b> <sup>[55]</sup> 5:10 6:17 7:5 8:5 11:22</p>	<p>12:1,12,16,19,20,20 21:12 22:10, 15,18 24:18 25:3,22 26:3,4,11,17, 19 27:5 30:20,21 31:9,12,24 32:2 34:25 35:11 36:1,14,25 37:4 41: 21,25 42:15 43:17 44:24 46:2,11, 18 50:4 51:2 53:11 55:10,15,16 57:13 58:9 62:4,5,7  <b>price-setting</b> <sup>[2]</sup> 31:19,20  <b>prices</b> <sup>[31]</sup> 3:15,23,25 7:24 12:23, 23 20:22 21:22,24,25 22:1,20,22, 25 24:3,6 26:8 28:3,4,13,14,24 29: 10,12,19 30:18 46:4 48:7 56:6 57: 21 61:13  <b>pricing</b> <sup>[15]</sup> 3:18 5:18 9:16 20:19 23:8 25:17 26:21 50:15,19,21,22 52:24 55:23 57:18 59:3  <b>principle</b> <sup>[2]</sup> 18:25 19:2  <b>principles</b> <sup>[4]</sup> 20:13 23:22 26:22 30:15  <b>prior</b> <sup>[1]</sup> 63:23  <b>pro</b> <sup>[1]</sup> 60:4  <b>probably</b> <sup>[1]</sup> 59:21  <b>problem</b> <sup>[11]</sup> 19:6,7 26:25 41:15, 17 45:8,15 50:11 12 55:21 60:13  <b>problems</b> <sup>[3]</sup> 17:14,16 39:22  <b>proceeding</b> <sup>[1]</sup> 44:19  <b>process</b> <sup>[1]</sup> 7:13  <b>producer</b> <sup>[2]</sup> 41:15 54:5  <b>product</b> <sup>[4]</sup> 36:25 37:4,7 60:23  <b>products</b> <sup>[2]</sup> 24:18 47:3  <b>profit</b> <sup>[4]</sup> 44:13,16 45:4 48:16  <b>profits</b> <sup>[7]</sup> 36:10 37:10,17 42:12, 14 43:21 63:24  <b>prohibit</b> <sup>[1]</sup> 20:11  <b>prohibiting</b> <sup>[1]</sup> 65:15  <b>prohibits</b> <sup>[1]</sup> 4:3  <b>promise</b> <sup>[1]</sup> 40:2  <b>proof</b> <sup>[3]</sup> 29:16 35:14 57:12  <b>properly</b> <sup>[1]</sup> 20:11  <b>property</b> <sup>[1]</sup> 4:15  <b>protect</b> <sup>[1]</sup> 33:23  <b>protected</b> <sup>[1]</sup> 33:18  <b>prove</b> <sup>[4]</sup> 6:20 29:18 44:23 59:19  <b>proven</b> <sup>[1]</sup> 16:12  <b>provider</b> <sup>[1]</sup> 48:15  <b>provision</b> <sup>[2]</sup> 62:24 63:4  <b>proximate</b> <sup>[10]</sup> 19:1 20:14 21:16 23:23 26:22 30:15 50:16,20,22,24  <b>proximately</b> <sup>[2]</sup> 46:6 51:7  <b>proximity</b> <sup>[5]</sup> 21:18,18 28:19,20, 22  <b>purchase</b> <sup>[3]</sup> 16:20 36:15 48:14  <b>purchased</b> <sup>[2]</sup> 33:24 45:20  <b>purchaser</b> <sup>[10]</sup> 7:1,3 11:11,13 19: 13 33:10 39:12,23 47:14 59:12  <b>purchasers</b> <sup>[21]</sup> 15:16 17:14,15, 18,20,23 19:18,19 33:5,15 34:15 39:3,4,5 46:10 47:16 49:7 54:8 59: 8,9 64:9  <b>purchasing</b> <sup>[1]</sup> 47:22  <b>purposes</b> <sup>[1]</sup> 17:7  <b>put</b> <sup>[7]</sup> 13:6 25:19 34:6 42:4 55:18 60:1 63:15  <b>puts</b> <sup>[2]</sup> 7:5 25:11</p>
---	---	--	--

## Official - Subject to Final Review

<p><b>putting</b> <sup>[1]</sup> 51:12</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualify</b> <sup>[1]</sup> 4:23  <b>question</b> <sup>[26]</sup> 4:21 13:4,17 14:8,14,17 15:9 17:8,10 28:1,6,16,20 35:3 38:25 39:6,21,25 40:1 41:19 44:14,15 48:10 59:17 62:21 63:13  <b>questioned</b> <sup>[1]</sup> 17:2  <b>questions</b> <sup>[3]</sup> 13:5 20:9 48:25  <b>quickly</b> <sup>[1]</sup> 40:2  <b>quintessentially</b> <sup>[1]</sup> 18:15  <b>quite</b> <sup>[2]</sup> 6:7 44:12</p>	<p><b>respectfully</b> <sup>[2]</sup> 27:23 53:14  <b>respects</b> <sup>[1]</sup> 22:5  <b>Respondents</b> <sup>[12]</sup> 1:7,25 2:11 9:22 20:20 25:24 26:5 32:8,23,25 33:1 62:13  <b>Respondents'</b> <sup>[2]</sup> 14:21 63:23  <b>responding</b> <sup>[1]</sup> 10:7  <b>rest</b> <sup>[2]</sup> 19:21 54:1  <b>restraints</b> <sup>[1]</sup> 32:12  <b>restriction</b> <sup>[2]</sup> 5:12 46:18  <b>restrictive</b> <sup>[3]</sup> 29:6 44:8,9  <b>restructuring</b> <sup>[1]</sup> 48:12  <b>result</b> <sup>[7]</sup> 22:25 26:20 31:14 32:14 33:2,25 53:24  <b>retail</b> <sup>[2]</sup> 32:16 35:7  <b>retailer</b> <sup>[2]</sup> 22:5,14  <b>return</b> <sup>[1]</sup> 33:9  <b>returns</b> <sup>[1]</sup> 48:15  <b>revenue</b> <sup>[1]</sup> 42:20  <b>reverse</b> <sup>[1]</sup> 47:9  <b>review</b> <sup>[1]</sup> 57:9  <b>reward</b> <sup>[1]</sup> 29:12  <b>RICO</b> <sup>[1]</sup> 23:21  <b>ROBERT</b> <sup>[1]</sup> 1:6  <b>ROBERTS</b> <sup>[13]</sup> 3:3 19:24 32:4 34:2,13 35:16,22,25 36:3,17 55:25 61:15 65:17  <b>Rockefeller</b> <sup>[2]</sup> 12:4,4  <b>root</b> <sup>[3]</sup> 5:5 62:2,7  <b>rooted</b> <sup>[1]</sup> 3:12  <b>round</b> <sup>[4]</sup> 26:15,16,16,18  <b>rule</b> <sup>[26]</sup> 20:16 23:24 25:14 31:25,25 32:23 33:4,6,10,11,15 39:10 40:19 49:8,18 51:21,24 52:12,12 54:22 55:13 64:18,18,19,20,22  <b>run</b> <sup>[2]</sup> 43:25 44:1  <b>runs</b> <sup>[1]</sup> 9:16</p>	<p><b>seeks</b> <sup>[1]</sup> 33:3  <b>seem</b> <sup>[1]</sup> 53:2  <b>seems</b> <sup>[3]</sup> 20:25 25:9 40:23  <b>sell</b> <sup>[2]</sup> 11:23 58:20  <b>seller</b> <sup>[4]</sup> 39:13 50:13 54:10 59:7  <b>sellers</b> <sup>[1]</sup> 55:9  <b>selling</b> <sup>[3]</sup> 31:12 54:7 58:24  <b>sells</b> <sup>[2]</sup> 6:4 34:6  <b>sending</b> <sup>[1]</sup> 41:9  <b>sense</b> <sup>[2]</sup> 39:20 50:23  <b>separate</b> <sup>[2]</sup> 13:13 48:24  <b>separates</b> <sup>[1]</sup> 13:24  <b>services</b> <sup>[2]</sup> 4:13,20  <b>set</b> <sup>[10]</sup> 5:11 22:18 25:10 32:2 50:4,5,7,7 51:2 57:13  <b>sets</b> <sup>[3]</sup> 31:23 46:2,11  <b>setter</b> <sup>[2]</sup> 30:20,21  <b>setting</b> <sup>[11]</sup> 12:11 14:20,23 24:5 26:3,4,11 61:7 65:10,11,12  <b>shall</b> <sup>[1]</sup> 63:6  <b>share</b> <sup>[1]</sup> 17:20  <b>shared</b> <sup>[1]</sup> 41:2  <b>Shoe</b> <sup>[9]</sup> 12:6 13:2 14:10 16:16 19:15 20:11 23:5 30:9 54:2  <b>Shouldn't</b> <sup>[2]</sup> 17:10 23:12  <b>show</b> <sup>[3]</sup> 42:11 44:6,17  <b>side</b> <sup>[7]</sup> 25:20 33:22 35:18 38:3 49:15 51:11 52:10  <b>sides</b> <sup>[3]</sup> 25:2 34:24 36:19  <b>significance</b> <sup>[2]</sup> 55:13,14  <b>significant</b> <sup>[2]</sup> 56:1,4  <b>significantly</b> <sup>[1]</sup> 44:25  <b>similar</b> <sup>[1]</sup> 49:22  <b>simple</b> <sup>[7]</sup> 7:17 9:1 11:9 12:17 53:23 54:11 56:7  <b>simply</b> <sup>[9]</sup> 10:22 11:1 14:5 35:14 46:11,21 53:22 60:14,15  <b>since</b> <sup>[1]</sup> 15:12  <b>single</b> <sup>[4]</sup> 34:24 38:13 60:13 63:16  <b>situation</b> <sup>[3]</sup> 46:10 47:21 49:12  <b>situations</b> <sup>[1]</sup> 47:19  <b>skill</b> <sup>[1]</sup> 29:4  <b>Smith</b> <sup>[2]</sup> 8:22,24  <b>so-called</b> <sup>[2]</sup> 10:25 15:15  <b>software</b> <sup>[4]</sup> 4:14 10:21 60:25 61:3  <b>sold</b> <sup>[7]</sup> 15:19 31:3 58:25 59:22,24,25 60:1  <b>solely</b> <sup>[2]</sup> 62:13,19  <b>Solicitor</b> <sup>[5]</sup> 1:20 19:22 46:1,8,9  <b>somebody</b> <sup>[2]</sup> 30:7,21  <b>somehow</b> <sup>[1]</sup> 57:12  <b>sorry</b> <sup>[4]</sup> 5:13 18:1 47:1 51:10  <b>sort</b> <sup>[4]</sup> 20:15 24:5,9 60:3  <b>SOTOMAYOR</b> <sup>[15]</sup> 5:13,22,25 6:6,12,15 7:8 26:24 27:3,8,14,18 46:24 47:2,25  <b>Sotomayor's</b> <sup>[1]</sup> 48:10  <b>Sounds</b> <sup>[1]</sup> 56:14  <b>source</b> <sup>[1]</sup> 61:3  <b>spoke</b> <sup>[1]</sup> 6:25  <b>spot</b> <sup>[1]</sup> 17:7  <b>spread</b> <sup>[2]</sup> 39:2,4  <b>stage</b> <sup>[6]</sup> 29:17,24 33:8 44:15 52:3</p>	<p>56:20  <b>standardless</b> <sup>[2]</sup> 33:7 51:15  <b>standing</b> <sup>[3]</sup> 4:24 30:16 54:9  <b>stands</b> <sup>[1]</sup> 15:13  <b>started</b> <sup>[1]</sup> 12:16  <b>state</b> <sup>[2]</sup> 16:2 63:6  <b>stated</b> <sup>[2]</sup> 45:5 57:15  <b>STATES</b> <sup>[10]</sup> 1:1,14,22 2:7 17:3,11 18:8 20:3 48:21 62:12  <b>statute</b> <sup>[2]</sup> 23:14,23  <b>statutes</b> <sup>[1]</sup> 20:15  <b>statutory</b> <sup>[1]</sup> 23:19  <b>stay</b> <sup>[1]</sup> 27:20  <b>stayed</b> <sup>[1]</sup> 43:15  <b>step</b> <sup>[7]</sup> 6:21 19:3 20:17,18 21:3,14 23:25  <b>still</b> <sup>[11]</sup> 13:16 25:22 26:4 46:20 47:13,15,22,23 48:1,19 55:1  <b>stop</b> <sup>[2]</sup> 20:16 23:24  <b>store</b> <sup>[22]</sup> 15:20 21:5 32:14 34:10,12 35:5 36:12 42:13 45:10,12 46:3 48:1,3,6 50:10 51:6 52:25 54:8,20 56:6 58:20 61:6  <b>strata</b> <sup>[2]</sup> 59:25,25  <b>street</b> <sup>[1]</sup> 18:17  <b>structure</b> <sup>[1]</sup> 25:3  <b>structured</b> <sup>[1]</sup> 37:15  <b>stuck</b> <sup>[2]</sup> 39:8 41:17  <b>subject</b> <sup>[3]</sup> 5:11 34:23 64:21  <b>submitted</b> <sup>[2]</sup> 65:18,20  <b>substance</b> <sup>[3]</sup> 14:23 55:21 64:24  <b>substantive</b> <sup>[2]</sup> 64:19,22  <b>subtract</b> <sup>[1]</sup> 58:6  <b>succinctly</b> <sup>[1]</sup> 40:16  <b>sue</b> <sup>[11]</sup> 4:24 15:17 17:18 31:17,18 33:1 37:12 41:24 62:24,25 64:3  <b>sued</b> <sup>[4]</sup> 15:23,24 16:3 64:3  <b>suffer</b> <sup>[1]</sup> 3:23  <b>suffering</b> <sup>[1]</sup> 36:12  <b>suggest</b> <sup>[1]</sup> 64:19  <b>suggesting</b> <sup>[2]</sup> 13:20 24:4  <b>suggestion</b> <sup>[1]</sup> 63:23  <b>suing</b> <sup>[3]</sup> 16:9 19:19 35:9  <b>suit</b> <sup>[1]</sup> 34:23  <b>suited</b> <sup>[1]</sup> 17:23  <b>sum</b> <sup>[1]</sup> 14:23  <b>super-competitive</b> <sup>[3]</sup> 21:12 37:3 62:7  <b>supplied</b> <sup>[1]</sup> 21:6  <b>supplier</b> <sup>[4]</sup> 8:5 36:6 51:6,19  <b>suppliers</b> <sup>[4]</sup> 8:1 16:9 47:4 55:9  <b>supply</b> <sup>[5]</sup> 13:8,15,21 35:6 36:8  <b>supporting</b> <sup>[3]</sup> 1:23 2:8 20:4  <b>Suppose</b> <sup>[5]</sup> 11:15 41:20 46:16 60:12 63:9  <b>suppression</b> <sup>[1]</sup> 6:16  <b>SUPREME</b> <sup>[3]</sup> 1:1,13 56:21  <b>sustains</b> <sup>[2]</sup> 43:8,23</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tack</b> <sup>[1]</sup> 46:11  <b>talked</b> <sup>[1]</sup> 13:1  <b>technology</b> <sup>[1]</sup> 61:8  <b>tend</b> <sup>[1]</sup> 11:4</p>
--	---	---	---



## Official - Subject to Final Review

<p><b>Tens</b> <sup>[1]</sup> 15:21  <b>terms</b> <sup>[3]</sup> 6:10 46:15 47:19  <b>test</b> <sup>[2]</sup> 52:13,15  <b>testing</b> <sup>[1]</sup> 4:15  <b>text</b> <sup>[1]</sup> 23:14  <b>themselves</b> <sup>[2]</sup> 4:18 9:24  <b>theoretically</b> <sup>[1]</sup> 27:9  <b>theories</b> <sup>[3]</sup> 8:17 19:8 20:12  <b>theory</b> <sup>[42]</sup> 3:11 4:2 5:7 6:10 7:7, 17 8:6 9:1,15 13:9 15:3,5 19:20 26:20 30:6,8,13 34:4,16 37:23,23 45:4 54:18,23,24 55:3 56:6,18 58:13,15,16,18 62:3,8,17,18,18 64:1, 23,23 65:3,7  <b>there's</b> <sup>[14]</sup> 4:10,10 14:1 17:19 18: 2 21:14 34:2,3 40:12 41:4 44:12 45:3,12 52:16  <b>thereby</b> <sup>[1]</sup> 12:7  <b>They've</b> <sup>[2]</sup> 17:12 29:20  <b>thinking</b> <sup>[1]</sup> 56:11  <b>thinks</b> <sup>[1]</sup> 26:2  <b>third</b> <sup>[3]</sup> 15:14 33:3 42:21  <b>third-party</b> <sup>[1]</sup> 12:11  <b>though</b> <sup>[3]</sup> 25:9 43:13 59:20  <b>thousand</b> <sup>[1]</sup> 25:12  <b>thousands</b> <sup>[1]</sup> 15:21  <b>threat</b> <sup>[1]</sup> 17:19  <b>three</b> <sup>[7]</sup> 8:16 32:21 42:16,24 59: 12 61:17 65:12  <b>throughout</b> <sup>[2]</sup> 11:24 64:1  <b>thrust</b> <sup>[1]</sup> 53:9  <b>ticket</b> <sup>[1]</sup> 52:20  <b>today</b> <sup>[2]</sup> 12:19 33:13  <b>tomorrow</b> <sup>[1]</sup> 12:21  <b>took</b> <sup>[1]</sup> 7:8  <b>torpedo</b> <sup>[1]</sup> 11:17  <b>transacting</b> <sup>[3]</sup> 13:23 28:21 37:12  <b>transaction</b> <sup>[5]</sup> 5:17 21:8 32:3 43: 18 52:17  <b>transactional</b> <sup>[2]</sup> 21:17 28:19  <b>transcript</b> <sup>[1]</sup> 65:4  <b>treble</b> <sup>[2]</sup> 60:5,17  <b>trial</b> <sup>[2]</sup> 30:10 59:11  <b>trouble</b> <sup>[1]</sup> 11:5  <b>troubles</b> <sup>[1]</sup> 15:1  <b>true</b> <sup>[5]</sup> 7:16,24 24:9 26:7 37:11  <b>truly</b> <sup>[1]</sup> 25:1  <b>try</b> <sup>[4]</sup> 9:13 40:15 41:18 59:19  <b>trying</b> <sup>[2]</sup> 38:4 52:4  <b>turn</b> <sup>[2]</sup> 19:22 25:16  <b>two</b> <sup>[10]</sup> 4:11 10:12 13:13 24:9 36: 19 37:10,11 44:7 48:24 49:21  <b>two-sided</b> <sup>[2]</sup> 11:6 34:22  <b>type</b> <sup>[1]</sup> 23:18</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimate</b> <sup>[3]</sup> 22:15 30:21 39:12  <b>under</b> <sup>[13]</sup> 26:22 30:14 31:25 32: 17,18 34:3,16 36:12 43:25 46:20 47:16,24 50:23  <b>underlying</b> <sup>[3]</sup> 39:18 49:21 54:18  <b>understand</b> <sup>[9]</sup> 11:13 21:16 27:3, 16 31:6 34:8 35:17,17 42:1  <b>understanding</b> <sup>[1]</sup> 11:5</p>	<p><b>understood</b> <sup>[4]</sup> 9:21 20:11 53:4, 17  <b>unique</b> <sup>[3]</sup> 19:6 52:24 61:7  <b>UNITED</b> <sup>[8]</sup> 1:1,14,22 2:7 11:16 12: 2,6 20:3  <b>unless</b> <sup>[3]</sup> 12:22 44:4,5  <b>unmistakably</b> <sup>[1]</sup> 62:11  <b>up</b> <sup>[14]</sup> 12:21 15:13 21:4 25:10 26: 15,18 40:1 56:7,17,25 57:5 59:19 60:3 65:8  <b>users</b> <sup>[1]</sup> 28:8  <b>using</b> <sup>[1]</sup> 61:8  <b>UtiliCorp</b> <sup>[5]</sup> 13:2 33:13,18 51:16 54:3  <b>utility</b> <sup>[2]</sup> 51:19,21</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>validity</b> <sup>[1]</sup> 15:10  <b>Valley</b> <sup>[1]</sup> 54:3  <b>variety</b> <sup>[1]</sup> 23:20  <b>vegetables</b> <sup>[2]</sup> 48:4,5  <b>versus</b> <sup>[4]</sup> 3:5 42:14 45:14 58:24  <b>vertical</b> <sup>[6]</sup> 6:2 13:8,15,21 14:6,20  <b>view</b> <sup>[2]</sup> 4:5 57:9  <b>viewed</b> <sup>[1]</sup> 54:12  <b>violation</b> <sup>[15]</sup> 28:22 29:1,2 30:18 34:1,3,9 46:3,5 47:6,23 52:6 58: 16,19,21  <b>violations</b> <sup>[2]</sup> 33:2 60:6  <b>violator</b> <sup>[1]</sup> 33:24  <b>virtue</b> <sup>[4]</sup> 12:25 43:11 46:12 52:24</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>WALL</b> <sup>[44]</sup> 1:18 2:3,13 3:6,7,9 4:7, 10,25 5:16,24 6:5,9,14 7:2,11,22 8:9,13,15 9:6 10:6,12 11:8 12:9 13:3 14:3,25 15:21,24 16:14,24 17:21,25 18:3,22 20:7 61:17,18, 20 62:20 63:3,10,17  <b>wanted</b> <sup>[2]</sup> 30:5 50:5  <b>wants</b> <sup>[2]</sup> 25:4 50:7  <b>warehouse</b> <sup>[1]</sup> 55:6  <b>Washington</b> <sup>[3]</sup> 1:9,21,24  <b>way</b> <sup>[12]</sup> 22:13 24:10 28:9 36:9 37: 14 43:19 44:3 49:17 51:14 53:3, 18 60:10  <b>ways</b> <sup>[2]</sup> 24:9 61:8  <b>weeks</b> <sup>[1]</sup> 52:23  <b>welfare</b> <sup>[1]</sup> 46:23  <b>whatever</b> <sup>[8]</sup> 5:10 19:19 25:3 27: 11 50:4,7,10 62:15  <b>whenever</b> <sup>[1]</sup> 30:20  <b>Whereupon</b> <sup>[1]</sup> 65:19  <b>whether</b> <sup>[10]</sup> 12:13 14:17 15:11 16: 19 29:17,20 40:2 42:21 43:22 50: 23  <b>who's</b> <sup>[1]</sup> 39:1  <b>whole</b> <sup>[5]</sup> 22:17 23:4,9 40:13,13  <b>wholly-owned</b> <sup>[2]</sup> 35:5 58:19  <b>will</b> <sup>[8]</sup> 7:6 11:21 14:16 17:19 33:7 58:10,11 59:21  <b>win</b> <sup>[1]</sup> 30:3  <b>wind</b> <sup>[1]</sup> 40:1  <b>wind-up</b> <sup>[1]</sup> 17:24</p>	<p><b>within</b> <sup>[4]</sup> 4:22 27:10,20 49:8  <b>Without</b> <sup>[2]</sup> 5:1 6:21  <b>wonder</b> <sup>[1]</sup> 15:11  <b>words</b> <sup>[7]</sup> 9:25 11:4 24:3 34:21 36: 23 54:23 62:18  <b>works</b> <sup>[1]</sup> 44:2  <b>world</b> <sup>[3]</sup> 11:24 52:22 65:11  <b>worry</b> <sup>[1]</sup> 45:2  <b>wrestling</b> <sup>[1]</sup> 39:7  <b>written</b> <sup>[1]</sup> 54:17</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>years</b> <sup>[2]</sup> 7:19 61:24</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zero</b> <sup>[3]</sup> 42:25 43:5,7</p>
--	--	--