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14 *Counsel for Plaintiffs*

15 UNITED STATES DISTRICT COURT

16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 MADELEINE LEPESANT and MARIANNE  
18 BOYLES, on behalf of themselves and all  
19 others similarly situated,

20 Plaintiffs

21 v.

22 Apple Inc.,

23 Defendant.  
24

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Madeleine Lepesant and Marianne Boyles (“Plaintiffs”), for their class action  
2 complaint, allege upon personal knowledge as to themselves and their own actions, and upon  
3 information and belief, including the investigation of counsel, as follows:

4 **NATURE OF ACTION**

5 1. This is an antitrust class action pursuant to Section 2 of the Sherman Antitrust Act  
6 of 1890, 15 U.S.C. § 2 (2004) (the “Sherman Act”) and California’s Unfair Competition Law, Cal.  
7 Bus. & Prof. Code § 17200, *et seq.* (the “UCL”), brought by Plaintiffs on their own behalf and on  
8 behalf of a class of persons similarly situated, those being persons who purchased software  
9 applications or licenses for software applications from the “iTunes” site or “App Store” owned and  
10 operated by Defendant Apple Inc. (“Apple”), or who made in-app purchases (defined herein)  
11 through such applications, for use on one or more Apple iPhones, iPads, or iPod Touches (“iOS  
12 Devices”) between December 29, 2007 and the present (the “Class Period”).<sup>1</sup>

13 **A. Summary Of Material Facts**

14 2. With great fanfare, Apple launched its first iPhone, called the iPhone 2G, on June  
15 29, 2007. Prior to and after its launch, Apple hailed the iPhone as a revolutionary, “breakthrough”  
16 “smartphone” that functioned like a mobile computer with desktop-class email and other Internet  
17 communications capability. Apple built the iPhone’s operating system, known as “iOS,” to enable  
18 iPhone users to download and run computer-like software programs (called “applications” or  
19 “apps”) to browse the Internet, transform music into cell phone ringtones, take photos, play games  
20 and engage in other functions typically performed on desktop or laptop computers.

21 3. Shortly thereafter, on September 14, 2007, Apple introduced the first iPod Touch, a  
22 hand-held computer similar to the iPhone, which operates on the iOS system and can run apps that  
23 run on the iPhone. On April 3, 2010, Apple introduced the first iPad, a tablet computer with a  
24 touch screen interface, utilizing, like the iPhone and the iPod Touch, the iOS operating system,  
25 and able to run apps that function on those devices.

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<sup>1</sup> The term “iPad” as used herein includes all iPad Pro, iPad Mini and iPad Air models as  
28 well as standard iPads.

1           4.       Unbeknownst to iOS Device consumers, however, from the time it launched the  
2 iPhone through the present date, Apple has engaged in an anticompetitive scheme to monopolize  
3 the aftermarket for iOS applications (including purchases made within applications, such as  
4 payment for additional application features, full versions of games, and subscriptions for  
5 renewable access to content and memberships (*e.g.*, Hulu and Spotify) (“in-app purchases”)) in  
6 order to control and derive supracompetitive profits from the distribution of iOS apps worldwide.<sup>2</sup>  
7 As a result of its scheme, Apple has, from introduction of the iPhone 2G in 2007, when the only  
8 apps available were those that came with the iPhone, through the present, cornered 100% of the  
9 worldwide distribution market for iOS applications.

10           5.       Apple has succeeded in totally eliminating any and all competition in that multi-  
11 billion dollar market. Apple’s App Store is the only store in the entire world – online or off-line –  
12 where the tens of millions of U.S.-based iOS Device owners (and the many tens of millions of iOS  
13 Device owners worldwide) can buy an iOS app, and Apple’s unlawful monopolization of the apps  
14 market has enabled Apple to charge and collect a supracompetitive 30% fee from iOS Device  
15 consumers for each and every one of the billions of iOS apps they have bought since the iPhone’s  
16 launch thirteen years ago. Consequently, iOS Device consumers nationwide have paid hundreds  
17 of millions of dollars more for iOS apps than they would have paid in a competitive market.

18           6.       Unlike traditional desktop or laptop computer manufacturers, whose computers’  
19 operating systems allow consumers to buy software applications from any and all competing  
20 software distributors, Apple’s iOS system prohibits iOS Device consumers from buying software  
21 applications from anyone other than Apple.

22           7.       Even Apple’s own iMac and MacBook desktop and laptop computers’ operating  
23 systems – from which the iOS operating system was derived – allow consumers to buy software  
24 from whatever source they like and to pay the software manufacturer or distributor directly  
25 without having to pay an additional fee to Apple. There is no legitimate basis for Apple to treat its  
26

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27 <sup>2</sup>       Herein, references to the market for iOS applications include the market for in-app  
28 purchases.

1 iOS Devices customers any differently than it treats its iMac or MacBook customers, or to charge  
2 its iOS Devices customers a 30% mark-up for any and all software they buy for their iOS Devices.

3 8. But when Apple developed its unique iPhone, Apple took advantage of the heavy  
4 demand for its novel product to equip it with an operating system that foreclosed iPhone  
5 consumers from buying software from any source other than Apple. When Apple subsequently  
6 introduced the iPad and the iPod Touch, it placed the same software constraints on them. Apple  
7 thus forced those foreclosed iOS Devices consumers to pay Apple a 30% fee for each and every  
8 iOS app they buy. Stated in antitrust terminology, Apple improperly exploited its relationships  
9 with customers who purchased Apple's highly desirable and expensive iOS Devices by locking  
10 them in, without their knowledge or consent, into an aftermarket for iOS apps monopolized by  
11 Apple.

12 9. In addition to exerting anticompetitive control through the direct purchase of apps  
13 on the App Store, Apple also controls and receives supracompetitive profits on in-app purchases,  
14 including but not limited to subscriptions.

15 10. Apple's contracts with all developers offering content for iOS devices provide that  
16 Apple obtains 30% of the amount consumers pay for virtually all types of in-app purchases and  
17 subscriptions. Apple's establishment of a 30% commission rate has remained static since the  
18 onset. Apple chose the 30% commission without regard to or analysis of the costs to run the App  
19 Store.

20 11. Prior to 2011, users could read content from subscriptions made outside iOS, but  
21 were limited to a one-time subscription, not recurring subscriptions. In 2011, Apple expanded its  
22 functionality to allow for the sales of recurring subscriptions when purchased in the App Store but  
23 required a 30% commission. In 2016, Apple changed its policy such that for long-term  
24 subscriptions lasting over a year, Apple's fee is 30% during the first year but goes down to 15%  
25 thereafter.

26 12. In late 2020, Apple introduced the Small Business Program. That program reduced  
27 Apple's commission to 15% for developers making less than one million dollars. Apple's  
28 implementation of the Small Business Program was spurred, in part, by the COVID-19 pandemic

1 but also by litigation and regulatory pressure.

2 13. Apple also controls what prices developers can charge. It exercises that control by  
3 insisting that every paid app be priced in dollar increments at \$0.99, \$1.99, \$2.99, and so forth.

4 14. Apple's motive for its anticompetitive conduct was simple: Apple did not want its  
5 iOS Device-related revenue stream to end when a consumer bought an iOS Device, like it  
6 generally does when consumers purchase iMac and MacBook computers. So Apple concocted  
7 and maintained a plan to continue generating additional revenues over the entire useful life of  
8 every iOS Device it sold by cornering the distribution market for iOS applications and charging  
9 consumers an extra 30% for every app. Through this scheme Apple would profit not only from  
10 the sales of tens of millions of iOS Devices, it would also profit from each and every one of the  
11 billions of future apps sales made to Apple's iOS Devices customers.

12 15. Apple's anticompetitive scheme has generated enormous supracompetitive profits  
13 for Apple. Apple now offers more than 2.22 million apps in the App Store,<sup>3</sup> and iOS Device  
14 consumers worldwide have downloaded apps more than 200 billion times since July 2008.  
15 According to Sensor Tower, the provider of a leading app analytics platform that aggregates data  
16 about consumer app downloads and purchases for use by developers, in 2019, the average annual  
17 in-app spending per active iPhone in the United States reached \$100.<sup>4</sup> iOS Devices consumers  
18 have been overcharged billions of dollars for paid apps and in-app purchases during the Class  
19 Period as a result of Apple's anticompetitive conduct.

20 16. That Apple has engaged in unlawful monopolistic behavior with respect to iOS  
21 apps is perfectly consistent with Apple's attitude towards antitrust compliance generally. A  
22 federal district court judge who observed Apple's attitude towards antitrust compliance during a  
23 2013 trial found that Apple had unlawfully fixed e-book prices and concluded that Apple as an  
24 institution simply "does not want to engage in retail price competition" – indeed, "one of its

25 \_\_\_\_\_  
26 <sup>3</sup> See <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/> (last viewed November 9, 2021).

27 <sup>4</sup> See <https://sensortower.com/blog/revenue-per-iphone-2019> (last viewed November 9,  
28 2021).

1 principal goals was the elimination of all retail price competition,” and “it was happy if a result of  
2 that ... was an increase in prices” that “the consumer had to pay.”<sup>5</sup>

3 17. That district court further stated that “[t]he record at trial demonstrated a blatant  
4 and aggressive disregard at Apple for the requirements of the law,” (Hr’g Tr. 17:1-2) even among  
5 “Apple lawyers and its highest executives” (*id.* at 17:5-6), and concluded that an injunction was  
6 needed to ensure that a “comprehensive and effective” (*id.* at 19:18) antitrust compliance training  
7 program would be undertaken by “each of Apple’s officers and directors engaged in whole or in  
8 part in activities relating to the supply of content,” including “apps” (*id.* at 13:18-20). “Neither  
9 Mr. [Eddy] Cue,” the Apple executive responsible for Apple’s App Store, nor “his assigned in-  
10 house counsel, could remember [having] any training on antitrust issues,” and “[t]hey and those on  
11 their teams need to understand what the law requires and how to conform their business practices  
12 to the law.”<sup>6</sup>

13 18. Apple’s unlawful monopolization of the iOS applications aftermarket from July  
14 2007 through the present is a direct reflection of Apple’s goal of “eliminating all retail price  
15 competition” and its culture of disdaining antitrust compliance in order to increase the prices its  
16 customers pay. Through its actions, Apple has unlawfully stifled competition by erecting  
17 impenetrable barriers to entry to would-be distributors of iOS apps, reduced consumer choice in  
18 what would otherwise be a robust and competitive iOS software applications marketplace, and  
19 artificially increased prices for iOS software applications to supracompetitive levels.

20 19. Apple’s illegal iOS apps monopoly should be enjoined and dismantled, and  
21 Plaintiffs and the tens of millions of nationwide iOS Devices consumers they seek to represent  
22 should be reimbursed by Apple for the billions of dollars they have been overcharged.

23 **B. Summary Of Claims**

24 20. In pursuit and furtherance of its unlawful anticompetitive activities, Apple:  
25 (a) failed to obtain iOS Devices consumers’ contractual consent to Apple’s monopolization of the

26 <sup>5</sup> Hearing Transcript (“Hr’g Tr.”) at 11:4-5, 33:10-13, *U. S. v. Apple Inc.*, No. 1:12-cv-  
27 02826-DLC (S.D.N.Y. Aug. 27, 2013), ECF No. 371, filed Sept. 5, 2013.

28 <sup>6</sup> Hr’g Tr. at 18:11-13.

1 iOS applications aftermarket, the effect of which was to lock consumers into buying apps only  
2 from Apple and paying Apple’s 30% fee, even if they wished to buy apps elsewhere or pay less;  
3 and (b) failed to obtain iOS Devices consumers’ contractual consent to having their iOS Devices  
4 “locked” to prohibit them from using any app that was not approved or sold by Apple, thereby  
5 preventing iOS Devices purchasers from downloading and using other apps, called “Third Party  
6 Apps.”

7 21. Apple violated Section 2 of the Sherman Act by monopolizing or attempting to  
8 monopolize the iOS Devices aftermarket in a manner that harmed competition and injured iOS  
9 apps consumers by reducing output and consumer choice, and by increasing prices for iOS apps to  
10 supracompetitive levels. Apple’s conduct also violates California’s Unfair Competition Law, Cal.  
11 Bus. & Prof. Code § 17200, *et seq.*, which prohibits any unlawful, unfair, or fraudulent business  
12 act or practice.

13 22. Plaintiffs seek: declaratory and injunctive relief; treble and exemplary damages or,  
14 in the alternative, restitution; costs; and attorneys’ fees. As for equitable relief, Plaintiffs seek an  
15 order restraining Apple from selling iOS Devices that are programmed in any way to prevent or  
16 hinder consumers from downloading Third Party Apps, or minimally, restraining Apple from  
17 selling or distributing iOS Devices without first obtaining the consumers’ express contractual  
18 consent to (a) buying apps only from Apple and (b) having their iOS Devices locked to accept  
19 only apps purchased from Apple.

20 **THE PARTIES**

21 23. Plaintiff Madeleine Lepesant is an individual residing in Altadena, California who  
22 purchased iOS Devices from Apple, including, but not necessarily limited to, an iPhone in or  
23 about October 2019, and an iPod Touch in or about October 2012. Plaintiff Lepesant paid Apple  
24 for iOS apps, in-app purchases and/or subscriptions during the Class Period.

25 24. Plaintiff Marianne Boyles is an individual residing in Casa Grande, Arizona who  
26 purchased an iPhone in or about 2021. Plaintiff Boyles paid Apple for iOS apps, in-app purchases  
27 and/or subscriptions during the Class Period.

28 25. Defendant Apple is a California corporation with its principal place of business

1 located at 1 Infinite Loop, Cupertino, California 95014. Apple regularly conducts and transacts  
2 business in this District and elsewhere in the United States. Apple manufactures, markets, and  
3 sells the iOS Devices, including the iPhone, iPad and iPod Touch, among other electronic devices.

4 **JURISDICTION AND VENUE**

5 26. This Court has federal question jurisdiction pursuant to the Sherman Act, the  
6 Clayton Antitrust Act of 1914, 15 U.S.C. § 15, and pursuant to 28 U.S.C. §§ 1331 and 1337. The  
7 Court has supplemental jurisdiction over Plaintiffs’ state law claim pursuant to 28 U.S.C. § 1367.

8 27. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because  
9 sufficient diversity of citizenship exists between parties in this action, the aggregate amount in  
10 controversy exceeds \$5,000,000, and there are 100 or more members of the proposed class.

11 28. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Apple has its  
12 principal place of business in this District, a substantial part of the events or omissions giving rise  
13 to Plaintiffs’ claims occurred here, and Apple is a corporation subject to personal jurisdiction in  
14 this District and, therefore, resides here for venue purposes.

15 29. Each Plaintiff and member of the Class, in order to purchase an iOS app or make  
16 in-app purchases, was required to accept Apple’s iTunes terms of service which required lawsuits  
17 to be filed in courts in the State of California.

18 **DIVISIONAL ASSIGNMENT**

19 30. This action arises in Santa Clara County where Defendant Apple is headquartered.  
20 Therefore, pursuant to Civil Local Rule 3-2(e), the appropriate divisional assignment is the San  
21 Jose Division.

22 **FACTUAL ALLEGATIONS**

23 **A. Apple’s Anticompetitive Conduct**

24 31. In Spring 2007, Apple began a massive advertising campaign to market its new  
25 wireless communication device, the iPhone. The iPhone was advertised as a combined mobile  
26 phone, iPod and “breakthrough” Internet communications device with desktop-class email, an  
27 “industry first” “visual voicemail,” web browsing, maps and searching capability. The iPhone  
28 was, in effect, the world’s first mobile computer. The iPhone shifted the paradigm for



1 smartphones, and it changed the entire cell phone manufacturing industry.

2       32. Having designed and manufactured a highly advanced and desirable new product,  
3 Apple profited handsomely from selling its revolutionary new handset. The iPhone debuted on  
4 June 29, 2007, and despite its hefty \$499 or \$599 price tag, consumers waited in line to get their  
5 hands on one.<sup>7</sup>

6       33. Shortly after it introduced the iPhone, in September 2007, Apple introduced the  
7 iPod Touch. The prices for those devices ranged between \$299 to \$399. In March 2010, it  
8 introduced its first iPad, which sold at prices of \$499 to \$699. The prices for each of these devices  
9 varied depending on how many gigabytes of storage they included.

10       34. 2.2 billion iPhones have been sold worldwide since the product was introduced, as  
11 well as more than 350 million iPads and over 400 million iPod Touch devices.<sup>8</sup> Apple has  
12 rightfully earned hundreds of billions of dollars in revenue from selling its iOS Devices.

13       35. But Apple wanted more. It did not want to limit its revenues to what consumers  
14 were willing to pay for the iOS Devices themselves. Apple wanted a substantial piece of every  
15 dollar that consumers would ever pay to buy any kind of software for any iOS Device at any time  
16 anywhere in the world.

17       36. To achieve that end, Apple embarked on a scheme to monopolize the aftermarket  
18 for iOS applications and to foreclose and protect itself against any and all competition it might  
19 face in the distribution of iOS applications. In contrast to the robust competition Apple faces in  
20 the software aftermarket for its desktop and laptop computers, Apple wanted the entire iOS Device  
21 software aftermarket for itself. Apple achieved its unlawful goal through a series of actions.

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24 <sup>7</sup> Apple has since released numerous models of iPhone, iPad and iPod, with prices for high-  
25 end models of iPhone and iPad Pro often ranging above \$1,000, and iPod Touches currently  
ranging between \$199 and \$399.

26 <sup>8</sup> See <https://kommandotech.com/statistics/how-many-iphones-have-been-sold-worldwide/>  
27 (last viewed November 9, 2021); [https://www.statista.com/statistics/269915/global-apple-ipad-](https://www.statista.com/statistics/269915/global-apple-ipad-sales-since-q3-2010/)  
28 [sales-since-q3-2010/](https://www.statista.com/statistics/269915/global-apple-ipad-sales-since-q3-2010/) (last viewed November 9, 2021); [https://www.businessinsider.com/rise-and-](https://www.businessinsider.com/rise-and-fall-apple-ipod-2020-1)  
[fall-apple-ipod-2020-1](https://www.businessinsider.com/rise-and-fall-apple-ipod-2020-1) (last viewed November 9, 2021).

1           37. Apple at all times retained exclusive control over the design, features and operating  
2 software for the iPhone, iPad and iPod Touch, known as iOS, which is based on the same  
3 technologies that are used in Apple’s desktop and laptop computers’ operating systems, known as  
4 OS X. Although Apple has always maintained OS X as an “open” system that allows iMac and  
5 MacBook consumers to run software manufactured or sold by any distributor, Apple modified its  
6 iOS version to be a “closed” system by installing “security measures” or “program locks”  
7 designed to prevent iPhone consumers from installing and running apps that were not sold or  
8 approved by Apple.

9           38. Apple did not close the iOS system for the purpose of protecting its proprietary  
10 right to own, sell or license iOS. Apple closed the iOS system for the specific purpose, and with  
11 the specific intent, of foreclosing competition from other potential iPhone software manufacturers  
12 and distributors so that Apple could monopolize and derive monopoly profits from the iOS apps  
13 aftermarket.

14           39. Apple’s CEO, Tim Cook, recently admitted that Apple tries to avoid competition  
15 from developers and other app stores: if other app stores were allowed to compete with its App  
16 Store, Apple would “have to differentiate [its App Store] in some way. I don’t know what we  
17 would do.”<sup>9</sup>

18           40. After Apple launched its iPhone 2G in June 2007, Apple enhanced its iPhone-  
19 related revenues either by developing its own apps for ringtones, instant messaging, Internet  
20 access, gaming, entertainment, video and photography or by enabling “approved” third party  
21 manufacturers to develop iOS apps. Apple always conditioned its “approval” of such apps on the  
22 third party’s agreement to give Apple a share of the third party’s sales proceeds.

23           41. However, because Apple’s OS X and iOS operating systems were based on the  
24 widely available Unix platform and included technologies and services that were based on other  
25 open software systems, Apple’s initial program locks designed to eliminate Third Party Apps  
26

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27 <sup>9</sup> *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640-YGR (N.D. Cal. May 21, 2021), Trial  
28 Tr. at 3934:23-3935:2, ECF No. 758.

1 proved ineffective, as clever third party programmers quickly circumvented Apple's security  
2 measures and made non-Apple approved iOS apps available for sale on the Internet.

3 42. Almost immediately after the iPhone's launch, unapproved Third Party Apps  
4 started to appear and threatened to compete with Apple in the iOS apps aftermarket. For example,  
5 Mobile Chat and FlickIM gave iPhone users access to instant messaging programs from which  
6 Apple derived no revenues. Apple responded to these threats by updating its iOS to eliminate  
7 iPhone consumers' ability to use these Third Party Apps and by warning its iPhone customers that  
8 using Third Party Apps would nullify Apple's iPhone warranty.

9 43. Apple also faced threatened competition for iPhone ringtones. When a customer  
10 purchased a song for \$1 from the Apple iTunes store, Apple charged the customer an additional 99  
11 cents to convert any portion of that song into a ringtone. A number of competing programmers  
12 promptly offered a variety of ringtone programs that enabled iPhone consumers to download both  
13 songs and ringtones for free. Some of these programs allowed customers to use samples of  
14 popular songs lawfully downloaded from Apple's iTunes store as a ringtone. Other programs,  
15 such as I-Toner from Ambrosia Software and iPhone RingToneMaker from Efiko software,  
16 allowed customers to "clip" portions of songs purchased by them from iTunes for use as ringtones.

17 44. Since many of these programs used songs downloaded from iTunes, Apple initially  
18 sought to block the use of those songs as ringtones by updating the iTunes software to install  
19 program locks that would interfere with such use. However, those efforts were all quickly  
20 defeated by third party programmers, sometimes within hours of the release of the update. So  
21 Apple again responded to these threats by updating its iOS to eliminate iPhone consumers' ability  
22 to use these Third Party Apps and by voiding the warranties of iPhone customers who used them.

23 45. Ultimately, Apple eliminated the threat of competition from unapproved apps  
24 developers by conceiving and implementing the App Store in order to become the exclusive  
25 distributor of iOS apps, and by thereafter rigorously enforcing and maintaining its monopoly.

26 46. Apple laid the groundwork for its App Store in March 2008, when Apple released a  
27 "software development kit" ("SDK") for the stated purpose of enabling independent software  
28

1 developers to design applications for use on the iPhone and iPod Touch. For an annual fee of \$99,  
2 the SDK allows developers to supply apps to Apple for distribution through Apple’s App Store.

3 47. Apple opened its App Store in July 2008. Apple owns 100% of the App Store,  
4 maintains and operates the App Store with Apple employees or agents, and controls all of the App  
5 Store sales, revenue collections and other business operations.

6 48. Apple informs its prospective apps developers (though not its iOS Device  
7 consumers) that the developers’ apps cannot be sold anywhere except in the App Store. Apple  
8 also informs its developers (but does not make clear to its iOS Devices customers ) that Apple will  
9 charge iOS Device consumers a 30% commission for any non-free app sold in the App Store.

10 49. Apple changed its website, shortly after the United States Supreme Court ruled in  
11 Plaintiffs’ favor in *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019), to disclose for a time that Apple  
12 “collects a 30% commission” on paid apps, subscription sales for the first year of the subscriptions  
13 (and 15% thereafter) and 30% on other in-app purchases.

14 50. Consequently, the prices for apps available in Apple’s App Store include the  
15 developers’ price plus Apple’s 30% mark-up.<sup>10</sup> When an iOS Device customer buys an app from  
16 Apple, it pays the full purchase price, including Apple’s 30% commission, directly to Apple.  
17 Apple takes its 30% commission off the top and then remits the balance, or 70% of the purchase  
18 price, to the developer. Apple sells the apps (or, more recently, licenses for the apps) directly to  
19 the customer, collects the entire purchase price, and pays the developers after the sale. The  
20 developers at no time directly sell the apps or licenses to iOS Devices customers or collect  
21 payments from the customers.

22 51. On information and belief, throughout the Class Period, Apple threatened to  
23 terminate any developer that made its apps available on its own website or through a distributor  
24 other than Apple, and Apple continued to discourage iOS Devices customers from downloading  
25

26  
27 <sup>10</sup> As discussed *supra*, in the case of apps and created by developers who qualify for the  
28 recently-created Small Business Program, Apple collects a 15% commission.

1 Third Party Apps by telling customers that Apple would void and refuse to honor the iOS Devices  
2 warranties of any customer who downloaded a Third Party App.

3 52. In addition to the sales of applications themselves, Apple's contracts with its  
4 developers provide for Apple to obtain a 30% commission for almost every type of in-app  
5 purchase.<sup>11</sup> Subscriptions are recurring purchases that allow consumers to obtain access to content  
6 for a period of time, and many subscriptions renew automatically unless the consumer proactively  
7 terminates them.

8 53. Apple also requires developers to select prices for their apps that end in "99 cents,"  
9 meaning that developers are required to increase prices in one-dollar increments (\$0.99, \$1.99,  
10 \$2.99, and so forth). As a practical matter, that allows only for very blunt price adjustments  
11 because "[t]he vast majority of [paid] apps are priced at 99 cents."<sup>12</sup> Thus, a developer wishing to  
12 set a price lower than the Apple-mandated minimum price point must give away the app for free;  
13 one wishing to price above that point must at least double the \$0.99 price.

14 54. By designing iOS as a closed system, installing security measures and program  
15 locks to prevent Third Party App downloads, establishing the App Store as the exclusive  
16 worldwide distributor of iOS apps, enforcing the App Store's exclusive distributor status by  
17 terminating apps developers who sold apps in competition with Apple, voiding the warranties of  
18 iOS Devices consumers who bought competing apps, and denying authorization of apps with in-  
19 app purchasing features that do not meet Apple's payment requirements, Apple has since June  
20 2007 willfully acquired and maintained a monopoly in the iOS apps aftermarket and has  
21 positioned itself as the one and only distributor of iOS apps on the entire planet. Apple has no  
22 competition in the multi-billion dollar iOS apps aftermarket, domestically or abroad, whatsoever.

23  
24  
25 <sup>11</sup> As set forth *supra*, subscriptions after the first year are subject to Apple's 15%  
26 commission.

27 <sup>12</sup> Tim Kridel, Pricing Strategies for Your App, Digital Innovation Gazette,  
28 <https://www.digitalinnovationgazette.com/dollars-and-distribution/pricing-strategies-for-your-app/index.php> (last viewed November 10, 2021).

1           55. Prior to Plaintiffs' purchases of their iOS Devices, Apple had not even disclosed –  
2 much less obtained the Plaintiffs' contractual consent to – either (a) Apple's monopolization of  
3 and collection of monopoly profits from the iOS applications aftermarket, or (b) having their iOS  
4 Devices locked to prohibit Plaintiffs from using any app that was not approved or sold by Apple.  
5 Absent obtaining Plaintiffs' contractual consent, Apple's monopolization of the iOS applications  
6 aftermarket constitutes an antitrust violation under Section 2 of the Sherman Act.

7 **B. Plaintiffs' Injuries**

8           56. Plaintiffs have been injured by Apple's anticompetitive conduct because they paid  
9 more for their iOS apps than they would have paid in a competitive market. Plaintiffs have also  
10 been injured because Apple's unlawful monopolization of the iOS apps aftermarket has  
11 extinguished Plaintiffs' freedom of choosing between Apple's App Store and lower cost market  
12 alternatives that would have been available had Apple not monopolized the market. Plaintiffs  
13 have also been injured because Apple's establishment and maintenance of monopoly pricing has  
14 caused a reduction in the output and supply of iOS apps, which would have been more abundantly  
15 available in a competitive market.

16           57. That Plaintiffs have paid supracompetitive prices is obvious for several reasons.  
17 Under basic and fundamental economic principles, the absence of competition leads to increased  
18 prices, and increased competition leads to lower prices. In a competitive market, an economically  
19 rational manufacturer or distributor will sell its products at prices equal to their cost plus a  
20 reasonable marginal rate of return (profit) dictated by the market environment. But an  
21 economically rational monopolist that is unconstrained by the downward pricing pressures of a  
22 competitive market will charge the highest price it can in light of the demand for its products; the  
23 greater the demand, the higher the profits. Indeed, it is hornbook economics that commercial  
24 entities strive to acquire and maintain monopoly power precisely because they want to reap the  
25 monopoly profits that market domination typically generates.

26           58. Apple and the iOS apps aftermarket are not immune from these presumptively  
27 valid economic principles. Indeed, as shown above, the generation of monopoly profits was  
28 exactly why Apple chose to monopolize the iOS apps aftermarket.

1           59. That Apple's 30% fee is a monopoly price is also obvious from Apple's cost  
2 structure. Each developer's \$99 annual fee covers most or all of Apple's costs of reviewing that  
3 developer's apps and the related proportional costs of operating and maintaining the App Store,  
4 even if the developer submits several apps annually. As to successive sales of that developer's  
5 apps, therefore, Apple's 30% fee constitutes virtually pure profit for Apple. In a competitive  
6 environment, where developers could sell their apps on their own websites without charging  
7 Apple's 30% mark-up and discount retailers could obtain volume discounts and sell for far less  
8 than a 30% profit, Apple would be under considerable pressure to substantially lower its 30%  
9 profit margin because, otherwise, its App Store would be priced out of the market and lose  
10 substantial market share. In a truly competitive iOS apps distribution environment, Apple's 30%  
11 margin would be simply unsustainable.<sup>13</sup>

12           60. A truly competitive iOS apps distribution market would also give Plaintiffs and  
13 other iOS Devices customers the freedom to choose between Apple's high-priced App Store and  
14 less costly alternatives, such as buying direct from apps developers or volume-driven and other  
15 software discounters. Plaintiffs' freedom to choose between these market alternatives has been  
16 eliminated by Apple's monopolistic conduct, and Plaintiffs have been forced to pay  
17 supracompetitive prices to Apple as a result.

18           61. The lack of a truly competitive environment has also led to reduced output and  
19 supply of iOS apps because developers are barred from selling apps at prices below Apple's  
20 inflated 30% marked-up price. Under basic economic principles, lower prices would generate  
21 both increased demand and increased supply to meet that demand in the iOS apps aftermarket as a  
22 whole. Apple's unlawful monopoly naturally restricts both supply and demand.

23 **C. Injury To Competition**

24           62. The same conditions – the existence of supracompetitive pricing, reduced consumer  
25 choice among market alternatives, and reduced output and supply – demonstrate that Apple's  
26

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27 <sup>13</sup> While, as set forth *supra*, the fee goes down to 15% for subscription purchases, after one  
28 year, that too would be unsustainable in a truly competitive environment.

1 monopolistic conduct has likewise injured competition generally in the iOS apps aftermarket.

2 63. The iOS apps market is not remotely like the genuinely competitive personal  
3 computer software market, where computer hardware manufacturers – including Apple itself – do  
4 not control or have a financial stake in every sale of software that is downloaded on the computers  
5 they make. In the aftermarkets for desktop and laptop computer software, the software developers  
6 can offer products directly to consumers or through discounters without having to gain the  
7 computer manufacturer’s approval and without the software customers paying the manufacturer a  
8 penny. Consequently, there is an abundant supply of competing software applications, and  
9 consumers can shop among multiple vendors without paying above market prices.

10 64. The iOS apps market lacks all of these indicia of competitiveness. Because Apple  
11 has unlawfully cornered the nationwide (and, indeed, worldwide) distribution market for iOS apps,  
12 the iOS apps aftermarket has been harmed generally by Apple’s anticompetitive conduct, which is  
13 precisely the type of harm the antitrust laws were enacted to remedy.

14 **CLASS ALLEGATIONS**

15 65. Plaintiffs bring this action as a class action on behalf of themselves and all others  
16 similarly situated for the purpose of asserting claims alleged in this Complaint on a common basis.  
17 Plaintiffs’ proposed class (the “Class”) is defined under Federal Rules of Civil Procedure 23(b)(2)  
18 and (3), and Plaintiffs propose to act as representatives of the following Class comprised of:

19 All persons in the United States, exclusive of Apple and its employees, agents and  
20 affiliates, and the Court and its employees, who purchased an iOS application or  
21 application license from Apple, or who made an in-app purchase, including, but not  
22 limited to, a subscription purchase, through such an application, for use on an iOS  
Device at any time from December 29, 2007 through the present.

23 66. The Class for whose benefit this action is brought is so numerous that joinder of all  
24 members is impractical.

25 67. Plaintiffs are unable to state the exact number of Class members without discovery  
26 of Apple’s records but, on information and belief, state that billions of iOS apps or licenses for  
27 apps were purchased during the Class Period.

28





1 Consequently, (a) consumers who purchased iOS Devices could not, at the point of sale,  
2 reasonably or accurately inform themselves of the “lifecycle costs” (that is, the combined cost of  
3 the handset and its required services, parts and applications over the iOS Device’s lifetime); and  
4 (b) consumers were “locked into” the iOS Device due to its high price tag and would incur  
5 significant costs to switch to another handset. The aftermarket for iOS applications is thus an  
6 economically distinct product market, and the applications that are distributed within that market  
7 have no acceptable substitutes.

8 77. The existence of competition in the mobile device market between Apple’s iPhone,  
9 iPod Touch and iPad and the makers of competing handsets such as Google’s Android phones,  
10 and Samsung’s Galaxy Tab tablets is irrelevant to the relevant market analysis in a Section 2  
11 Sherman Act aftermarket monopolization case, in which the existence or lack of competition in  
12 the aftermarket at issue is the only economically meaningful inquiry. The existence of Android  
13 mobile devices applications and applications geared toward other mobile device brands is likewise  
14 irrelevant because those applications are technologically incompatible with the iPhone and,  
15 therefore, are not reasonably interchangeable substitutes for iOS apps. Even if those other mobile  
16 device apps were technologically compatible, Apple’s exclusionary and monopolistic conduct  
17 would bar such apps from being sold in competition with Apple for the same reasons and in the  
18 same manner that Apple has foreclosed such competition for iOS Device Third Party Apps  
19 generally.

20 78. The geographic scope of the iOS applications aftermarket is national.

21 79. The aftermarket for iOS applications includes the market for distributing software  
22 applications that can be downloaded on iOS Devices for managing such functions as ringtones,  
23 instant messaging, photographic and video capability, gaming and other entertainment, Internet  
24 applications, and any other downloadable software-driven functions, and also includes the market  
25 for in-app purchases for iOS Devices such as additional app features, in-game currency, and  
26 subscriptions for access to content, services, games or platforms and similar purchases which can  
27 be made by a user from within an application.

28 80. The applications aftermarket came into existence immediately upon the sale of the

1 first iPhones because: (a) the applications aftermarket for iOS Devices is derivative of the iPhone;  
2 and (b) no Plaintiff or member of the Class agreed to any restrictions on their ability to access a  
3 competitive iPhone applications aftermarket.

4  
5 **COUNT I**  
6 **Unlawful Monopolization Of The Applications Aftermarket**  
7 **In Violation Of Section 2 Of The Sherman Act**  
8 **(Seeking Damages And Equitable Relief)**

9 81. Plaintiffs reallege and incorporate paragraphs 1 through 80 above as if set forth  
10 fully herein.

11 82. Apple has acquired monopoly power in the iOS applications aftermarket through  
12 unlawful, willful acquisition and maintenance of that power. Specifically, Apple has unlawfully  
13 acquired monopoly power by: (a) designing the iOS Devices operating system as a closed system  
14 and installing security measures and program locks for the specific purpose of preventing Third  
15 Party App downloads; (b) establishing the App Store as the exclusive worldwide distributor of  
16 iOS apps; and (c) enforcing the App Store's monopoly status by terminating or threatening to  
17 terminate apps developers who sell apps in competition with Apple and by voiding the warranties  
18 of iOS Devices consumers who buy competing apps.

19 83. Apple's unlawful acquisition of monopoly power has reduced output and  
20 competition and resulted in increased, supracompetitive prices for products sold in the iOS  
21 applications aftermarket and, thus, harms competition generally in that market.

22 84. Plaintiffs have been injured in fact by Apple's unlawful monopolization because  
23 they have been: (a) deprived of lower cost alternatives for apps; (b) forced to pay supracompetitive  
24 prices for apps; and/or (c) subjected to a lower output and supply of apps.

25 85. Apple's unlawful monopolization of the iOS applications aftermarket violates  
26 Section 2 of the Sherman Act, and its unlawful monopolization practices are continuing and will  
27 continue unless they are permanently enjoined. Plaintiffs and members of the Class have suffered  
28 economic injury to their property as a direct and proximate result of Apple's unlawful

1 monopolization, and Apple is therefore liable for treble damages, costs, and attorneys' fees in  
2 amounts to be proved at trial.

3  
4 **COUNT II**

5 **Attempted Monopolization Of The Applications Aftermarket In**  
6 **Violation Of Section 2 Of The Sherman Act**  
7 **(Seeking Damages And Equitable Relief)**

8 86. Plaintiffs reallege and incorporate paragraphs 1 through 80 above as if set forth  
9 fully herein.

10 87. Defendant Apple has engaged in exclusionary, predatory and anticompetitive  
11 conduct with a specific intent to monopolize the iOS applications aftermarket. Specifically, Apple  
12 has attempted unlawfully to acquire monopoly power by: (a) designing the iOS Devices operating  
13 system as a closed system and installing security measures and program locks for the specific  
14 purpose of preventing Third Party App downloads; (b) establishing the App Store as the exclusive  
15 worldwide distributor of iOS apps; and (c) enforcing the App Store's unlawfully acquired market  
16 position by terminating or threatening to terminate apps developers who sell apps in competition  
17 with Apple and by voiding the warranties of iOS Devices consumers who buy competing apps.

18 88. Apple's anticompetitive actions have created a dangerous probability that Apple  
19 will achieve monopoly power in the applications aftermarket because Apple has already  
20 unlawfully achieved an economically significant degree of market power in that market and has  
21 effectively foreclosed new and potential entrants from entering the market or gaining their  
22 naturally competitive market shares.

23 89. Apple's attempted acquisition of monopoly power has reduced output and  
24 competition and resulted in increased, supracompetitive prices for products sold in the iOS  
25 applications aftermarket and, thus, harms competition generally in that market.

26 90. Plaintiffs have been injured in fact by Apple's attempted monopolization because  
27 they have been: (a) deprived of lower cost alternatives for apps; (b) forced to pay supracompetitive  
28 prices for apps; and/or (c) subjected to a lower output and supply of apps.

91. Apple's attempted monopolization of the iOS applications aftermarket violates

1 Section 2 of the Sherman Act, and its anticompetitive practices are continuing and will continue  
2 unless they are permanently enjoined. Plaintiffs and members of the Class have suffered  
3 economic injury to their property as a direct and proximate result of Apple’s attempted  
4 monopolization, and Apple is therefore liable for treble damages, costs, and attorneys’ fees in  
5 amounts to be proved at trial.

6  
7 **COUNT III**  
8 **Violation of the California Unfair Competition Law,**  
9 **Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”)**  
10 **(Seeking, In The Alternative, Restitution And Also Equitable Relief)**

11 92. Plaintiffs reallege and incorporate paragraphs 1 through 80 above as if set forth  
12 fully herein.

13 93. Apple’s conduct, as described above, violates California’s Unfair Competition  
14 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, (the “UCL”) which prohibits, *inter alia*, any  
15 unlawful or unfair business act or practice. Apple has engaged in, and continues to engage in, acts  
16 that violate the unlawful and unfair prongs of the UCL. This claim is instituted pursuant to  
17 sections 17203 and 17204 of California Business and Professions Code, to obtain equitable relief,  
18 including restitution (in the alternative to damages) and an injunction, from Apple for acts, as  
19 alleged herein, that violated the UCL.

20 94. Plaintiffs have standing to bring this claim because they has suffered injury in fact  
21 and lost money as a result of Apple’s unfair competition. Specifically, Plaintiffs have been (a)  
22 deprived of lower cost alternatives for apps; and (b) forced to pay supracompetitive prices for  
23 apps.

24 95. Apple’s conduct as alleged herein violated the UCL. Apple’s acts and practices, as  
25 alleged herein, constituted a common and continuing course of conduct of unfair competition by  
26 means of unfair and unlawful practices within the meaning of the UCL, including, but not limited  
27 to, the violations of Section 2 of the Sherman Act and the policies underlying it.

28 96. The acts or practices alleged in this complaint violate the unfair prong of the UCL  
because the injuries complained of herein are substantial, including in their financial impact on

1 consumers. There are no countervailing benefits to consumers or competition from Apple's  
2 conduct. Consumers of iOS apps, iOS in-app products, or iOS devices, could not reasonably  
3 avoid the injuries inflicted upon them by Apple. Apple mandates these harmful practices, which it  
4 is able to do thanks to its market power as alleged herein.

5 97. Apple's behavior is also unfair because: it offends the nation's antitrust policies as  
6 alleged herein; it is substantially injurious to consumers as alleged herein; and it violates public  
7 policy that is tethered to this country's statutory antitrust regulation, as expressed in part in the  
8 Sherman Act. Apple's conduct is oppressive, unscrupulous, and substantially injurious to  
9 consumers, as alleged herein, and the harm to consumers outweighs any utility of Apple's  
10 conduct.

11 98. Apple's conduct substantially injures Plaintiffs and consumers who, as a direct  
12 result of Apple's anti-competitive conduct, have been: (a) deprived of lower cost alternatives for  
13 apps; and (b) forced to pay supracompetitive prices for apps.

14 99. Plaintiffs and members of the Class are entitled, in the alternative to damages under  
15 their Sherman Act claims, to full restitution and/or disgorgement of all revenues, earnings, profits,  
16 compensation, and benefits that may have been obtained by Apple as a result of such business acts  
17 or practices.

18 100. The unfair and illegal conduct alleged herein is continuing, and there is no  
19 indication that Apple will not continue such activity into the future.

20 101. Apple's unlawful and unfair business practices, as described above, have caused  
21 and continue to cause Plaintiffs and the members of the Class to pay supra-competitive and  
22 artificially-inflated prices for iOS apps and in-app purchases. Plaintiffs and the members of the  
23 Class suffered injury in fact and lost money or property as a result of such unfair competition.

24 102. As alleged in this Complaint, Apple has been unjustly enriched as a result of its  
25 wrongful conduct and by Apple's unfair competition. Plaintiffs and the members of the Class are  
26 accordingly entitled to equitable relief including restitution and/or disgorgement (in the alternative  
27 to damages) of all revenues, earnings, profits, compensation, and benefits that may have been  
28

1 obtained by Apple as a result of such business practices, pursuant to California Business and  
2 Professions Code sections 17203 and 17204.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment against  
5 Apple as follows:

- 6 a. Permanently enjoining Apple from monopolizing or attempting to monopolize the  
7 iOS applications aftermarket or, minimally, restraining Apple from selling or  
8 distributing iOS Devices without first obtaining the consumers' express contractual  
9 consent to (a) Apple's monopolization of and charging of monopoly prices in the  
10 iOS apps aftermarket, and (b) having their iOS Devices locked to accept only apps  
11 or purchased from Apple;
- 12 b. Awarding Plaintiffs and the Class treble damages for injuries caused by Apple's  
13 violations of the federal antitrust laws or, alternatively, awarding Plaintiffs and the  
14 Class restitution for injuries caused by Apple's violations of the UCL;
- 15 c. Awarding Plaintiffs and the Class reasonable attorneys' fees and costs; and
- 16 d. Granting such other and further relief as the Court may deem just and proper.

17 **DEMAND FOR TRIAL BY JURY**

18 Plaintiffs hereby demand a trial by jury.

19 DATED: November 12, 2021

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