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13
14 IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 Sean Colvin, Everett Stephens, Ryan)
Lally, Susann Davis, and Hope)
17 Marchionda *on behalf of themselves*)
and all others similarly situated,)

18 *Plaintiffs,*)

19 v.)

20 Valve Corporation,)

21 *Defendant.*)

Case No. 2:21-cv-00801-VAP-AS

22 **FIRST AMENDED CLASS
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
FOR:**

- 23 1) VIOLATION OF SECTION 1
OF THE SHERMAN ACT
(15 U.S.C. § 1)
2) VIOLATION OF SECTION 2
OF THE SHERMAN ACT
(15 U.S.C. § 2)

24 **DEMAND FOR JURY TRIAL**

25 Judge Virginia A. Phillips
Magistrate Judge Alka Sagar

26 **INTRODUCTION**

27 1. Valve Corporation’s Steam platform is the dominant platform for game
28 developers to distribute and sell PC games in the United States.

1 2. But the Steam platform does not maintain its dominance through better
2 pricing than by rival platforms.

3 3. Instead, Valve abuses the Steam platform’s market power by, upon
4 information and belief, requiring game developers to agree to give Valve either an
5 explicit “Most Favored Nations” provision, or forcing game developers to agree to
6 what is in effect a “Most Favored Nations” provision via Valve’s anticompetitive
7 conduct. Because of Valve’s conduct, upon information and belief, the game
8 developers agree, or otherwise capitulate to Valve’s demand, that the price of a PC
9 game on the Steam platform will be the same price the game developers sell their PC
10 games on other platforms.

11 4. Because of this Most Favored Nations provision, or “MFN,” and because
12 of Valve’s anticompetitive conduct, other platforms are unable to compete on price,
13 thereby insulating the Steam platform from competition. The MFN and Valve’s
14 conduct have the effect of keeping prices to consumers high, as price competition by
15 platforms would cause the prices of PC games sold to consumers to decrease. The
16 MFN and Valve’s conduct also hinders innovation and suppresses output, as they act
17 as an artificial barrier to entry by potential rival platforms and as higher prices lead to
18 less sales of PC Games.

19 5. During the pandemic, PC game purchases and usage have exploded, as
20 more and more Americans are spending more and more time at home. According to
21 Valve:

22 While Steam was already seeing significant growth in 2020 before
23 COVID-19 lockdowns, video game playtime surged when people started
24 staying home, dramatically increasing the number of customers buying
25 and playing games This has led to new highs for monthly active
26 users (120.4 million), daily active users (62.6 million), peak concurrent
27 users (24.8 million), first-time purchasers (2.6 million per month), hours
28

1 of playtime (31.3 billion hours), and the number of games purchased
2 (21.4% increase over 2019).¹

3 6. This court should stop the Steam platform’s abuse of its market power,
4 prevent it from entering into explicit or tacit MFNs with game developers, prevent it
5 from requiring, forcing, or coercing game developers to price games on Steam at no
6 less than the price on other platforms, or prevent it from otherwise agreeing with game
7 developers as to their prices, and order that the Class recover treble damages.

8 **DEFINITIONS**

9 7. For purposes of this Complaint, the following definitions apply.

10 8. An “MFN” is a “Most Favored Nation” agreement between platforms
11 and sellers, which can either be explicit or implicit, about the prices that sellers will
12 charge buyers who purchase through rival platforms.

13 9. A “PC game” is a type of computer game played on a personal computer
14 as opposed to a video game console or mobile device.

15 10. A “platform” facilitates economic transactions between parties and is a
16 means by which game developers sell their PC games to consumers. Game
17 developers market their PC games on platforms and set the price of those games. A
18 consumer purchasing a PC game pays the platform for the privilege of
19 downloading/playing a game, and the platform remits those proceeds, minus a
20 commission, to the game developer. Steam is a platform owned by Valve.

21 11. A “game developer” develops, markets, publishes, and/or sells PC games
22 to consumers. The dominant way consumers purchase games is via platforms—
23 specifically, the Steam platform.

24 **PARTIES**

25 12. Plaintiff Sean Colvin is a resident of Carlsbad, California. Mr. Colvin
26 regularly purchases PC games on the Steam platform. Accordingly, Mr. Colvin has

27 ¹ Steam,
28 <https://store.steampowered.com/news/group/4145017/view/2961646623386540826>
(last visited March 22, 2021).

1 been forced to pay supracompetitive prices for those PC games because of the Steam
2 MFN (as defined below) and because of Valve’s monopolistic conduct.

3 13. Plaintiff Everett Stephens is a resident of Cincinnati, Ohio. Mr. Stephens
4 regularly purchases PC games on the Steam platform. Accordingly, Mr. Stephens has
5 been forced to pay supracompetitive prices for those PC games because of the Steam
6 MFN and because of Valve’s monopolistic conduct.

7 14. Plaintiff Ryan Lally is a resident of San Diego, California. Mr. Lally has
8 purchased PC games on the Steam platform. Accordingly, Mr. Lally has been forced
9 to pay supracompetitive prices for those PC games because of the Steam MFN and
10 because of Valve’s monopolistic conduct.

11 15. Plaintiff Susann Davis is a resident of Bowling Green, Kentucky. Ms.
12 Davis has not agreed to the Steam Subscriber Agreement. Ms. Davis purchases PC
13 games on the Steam platform for her minor child, who has his own Steam account.
14 Accordingly, Ms. Davis has been forced to pay supracompetitive prices for those PC
15 games because of the Steam MFN and because of Valve’s monopolistic conduct.

16 16. Plaintiff Hope Marchionda is a resident of Bowling Green, Kentucky.
17 Ms. Marchionda has not agreed to the Steam Subscriber Agreement. Ms. Marchionda
18 purchases PC games on the Steam platform for her minor child, who has his own
19 Steam account. Accordingly, Ms. Marchionda has been forced to pay
20 supracompetitive prices for those PC games because of the Steam MFN and because
21 of Valve’s monopolistic conduct.

22 17. Defendant Valve operates a platform for game developers to sell PC
23 games to consumers called “Steam.” Valve has its principal place of business in
24 Bellevue, Washington. It is estimated that the Steam platform has a 75% share of the
25 relevant market, as defined herein.

26 18. Valve, via the Steam platform, has market power in the relevant market.
27
28

1 **JURISDICTION AND VENUE**

2 19. The United States District Court for the Central District of California has
3 subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C.
4 § 1337 (commerce and antitrust regulation), because this action arises under Sections
5 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 & 2) and Section 4 of the Clayton Act (15
6 U.S.C. § 15(a)).

7 20. Venue is proper in the United States District Court for the Central District
8 of California because Defendant is found in, has agents in, and transacts business in
9 the Central District of California as provided in 28 U.S.C. § 1391(b) and (c) and in
10 Sections 4 and 12 of the Clayton Act (15 U.S.C. §§ 15 & 22).

11 21. The United States District Court for the Central District of California has
12 personal jurisdiction over Defendant because, inter alia, it: (a) transacted business
13 throughout the United States, including in the Central District of California; (b) had
14 substantial contacts with the United States, including in the Central District of
15 California; and/or (c) was and is engaged in an illegal anticompetitive scheme that
16 was directed at and had the intended effect of causing injury to persons residing in,
17 located in, or doing business throughout the United States, including in the Central
18 District of California.

19 **ANTITRUST LAWS PROTECT COMPETITION**

20 22. Antitrust laws in the United States generally proscribe certain mergers,
21 acquisitions, and business practices, leaving it up to regulatory agencies and courts to
22 apply the general laws to ever-changing markets and business relationships.

23 23. Although application of antitrust laws by regulatory agencies and courts
24 depends on the facts and circumstances of each case, the antitrust laws all have the
25 same basic objective: “to protect the process of competition for the benefit of
26 consumers, making sure there are strong incentives for businesses to operate
27 efficiently, keep prices down, and keep quality up.” *The Antitrust Laws*, Federal Trade
28

1 Commission, [https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws)
2 [laws/antitrust-laws](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws) (last visited March 22, 2021).

3 24. The Sherman Act was passed in 1890 as the first antitrust law in the
4 United States. It had as its goal to be a “comprehensive charter of economic liberty
5 aimed at preserving free and unfettered competition as the rule of trade.” *Northern*
6 *Pacific R. Co. v. United States*, 356 U.S. 1, 4 (1958). “[T]he policy unequivocally
7 laid down by the Act is competition.” *Id.*

8 25. To that end, Section 1 of the Sherman Act prohibits contracts,
9 combinations, or conspiracies, that unreasonably restrain competition, and is focused
10 on concerted activity between two or more firms.

11 26. Section 2 of the Sherman Act makes it unlawful for any person to
12 “monopolize, or attempt to monopolize, or combine or conspire with any other person
13 or persons, to monopolize any part of the trade or commerce among the several States,
14 or with foreign nations”

15 27. At its core, Section 2 of the Sherman Act makes it illegal to acquire or
16 maintain monopoly power through improper means.

17 28. This case involves both agreements between firms that unreasonably
18 restrain competition, as well as single-firm conduct that represents an unlawful use of
19 market power and monopolistic conduct.

20 THE ECONOMICS OF MFNS

21 29. MFNs instituted by companies with market power are concerning from
22 an economic perspective for multiple reasons. Steven C. Salop & Fiona Scott Morton,
23 *Cover Story, Developing an Administrable MFN Enforcement Policy*, 27 *Antitrust*
24 *ABA* 15, 18 (Spring 2013).

25 30. Platform MFNs can harm competition by “keeping prices high and
26 discouraging the entry of new platform rivals.” Jonathan A. Baker & Fiona Scott
27 Morton, *Antitrust Enforcement Against Platform MFNs*, 127 *Yale L.J.* 2176, 2201
28 (May 2018) (“Baker I”).

1 31. Platform MFNs guarantee that other platforms cannot charge a “lower
2 final price, not because the focal platform has worked to ensure that it has the lowest
3 cost, but rather because it has contracted for competitors’ prices to be no lower.”
4 Baker I at 2178.

5 32. MFNs disincentivize sellers from offering low prices, because discounts
6 must be offered to all buyers. Baker I at 2179.

7 33. MFNs create artificial barriers to market entry:

8 “[S]uppose an entrant wishes to gain customers by charging a lower price
9 (perhaps because it has no established brand name or installed base). It
10 can profitably sell at a low price by undertaking selective contracting
11 with suppliers willing to offer a discount in exchange for more volume
12 or other favorable terms. If those suppliers also supply the incumbent,
13 however, an MFN imposed by the incumbent would require the supplier
14 to charge the same price to the entrant. This parity undermines the
15 entrant’s business model by preventing it from making an attractive offer
16 to customers. The symmetry that MFNs impose on the marketplace thus
17 can prevent new competition that would lower prices.”

18 Baker I at 2180.

19 34. Platform MFNs, such as the Steam MFN (discussed below), prevent
20 “outbreaks of competition” because they require each seller (e.g., game developers)
21 selling on the Steam platform to “set the same price on a rival’s or entrant’s platform.
22 This parity may undermine the discount . . . business model by preventing it from
23 making attractive offers to” both game developers and consumers. Baker I at 2181–
24 82.

25 35. When a platform imposes an MFN prohibiting lower prices on other
26 platforms, it “serves to suppress competition on the crucial dimension of price[,]” and
27 keeps new entrants from undercutting the dominant platform’s commission, and, but
28 for the MFN, driving consumers to the rival platform. Benjamin Edelman & Julian
29 Wright, *Price Restrictions in Multi-sided Platforms: Practices and Responses*, 10
30 Competition Policy Int’l 86 (Jan. 30, 2015).

31 36. “Platform MFNs with greater scope and duration would be expected to
32 have stronger anticompetitive effects.” Because of the vast number of game

1 developers selling on the Steam platform and subject to the Steam MFN, discount
2 platforms are unable to complete. Game developers are unwilling to price at a lower
3 level, because they must do so across all platforms. Baker I at 2182.

4 37. Economic modeling demonstrates that when a dominant platform
5 requires its sellers to agree to an MFN, there are (a) higher platform fees; (b) higher
6 retail prices; and (c) firms with lower-cost models are discouraged from entry. Andre
7 Boik & Kenneth S. Courts, *The Effects of Platform Most-Favored Nation Clauses on*
8 *Competition and Entry*, 59 J.L. & Econ. 105, 113–29 (Feb. 2016).

9 38. As shown in the Boik & Courts model, a lower price entrant (such as
10 Discord, discussed below) cannot successfully enter because the platform’s MFN
11 does not allow the entrant to lower prices to attract both sellers and consumers. *See*
12 *also, e.g.,* Ameila Fletcher & Morten Hviid, *Broad Retail Price MFN Clauses: Are*
13 *They RPM “At Its Worst”?*, 81 Antitrust L.J. 1, 74 (2016) (“MFNs can restrict entry
14 at the retail level. Specifically, they can disadvantage potential retail competitors with
15 low-end business models by eliminating such an entrant’s ability to win customers
16 away from the incumbent by offering lower prices and earning a smaller margin.”).

17 39. Additionally, MFNs “tend to raise industry prices” because they “kill a
18 retailer’s incentives to compete in the terms of trade that it offers suppliers. The
19 reason is that a retailer who raises the commission it charges . . . knows that the price
20 set through its store will not increase relative to that at other stores. . . . This means
21 that suppliers cannot asymmetrically adjust their prices to divert demand towards
22 retailers offering more attractive contractual terms.” Justin P. Johnson, *The Agency*
23 *Model and MFN Clauses*, *The Review of Economic Studies*, 1153–54 (Jan. 2017).

24 40. MFNs thus “harm competition by assisting an incumbent in foreclosing
25 the entry or expansion of rivals.” Jonathan B. Baker & Judith A. Chevalier, *The*
26 *Competitive Consequences of Most-Favored-Nation Provisions*, 27 Antitrust No. 2,
27 24 (Spring 2013) (“Baker II”).
28

1 41. MFNs harm competition “by making it impossible for a dominant
2 incumbent firm’s rivals, including entrants, to bargain . . . for a low price.” Baker II
3 at 24.

4 42. Indeed, real world examples show that, when platform MFNs are
5 banned, prices to consumers fall. Andrea Mantovani, et al., *The Dynamics of Online*
6 *Hotel Prices and the EU Booking.com Case* NET Institute Working Paper No. 17-04
7 (2017), available at http://ssrn.com/abstract_id=3049339 [[http://perma.cc/W9K9-](http://perma.cc/W9K9-Y546)
8 [Y546](http://perma.cc/W9K9-Y546)]. The leading booking site responded to the MFN ban by introducing quality
9 improvements to the service it provided. *See id.* at 6 tbl.1, suggesting online platform
10 competition increased when platform MFNs were banned.

11 43. As discussed herein, the Steam MFN: (a) raises prices to consumers; (b)
12 prevents rival platforms from competing on price; (c) discourages new entry by a low-
13 commission-charging platform; and (d) suppresses output by game developers. Under
14 the economics applicable to MFNs, the Steam MFN is anticompetitive. Similarly,
15 Valve’s abuse of its market and monopoly power to keep pricing parity across
16 platforms is anticompetitive.

17 THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

18 44. The relevant product market is the market for sale of PC games to
19 consumers.

20 45. Alternatively, the relevant product market is the two-sided transactions
21 market for the sale of PC games by game developers, through platforms, to
22 consumers.

23 46. Games designed to work on personal computers (e.g., desktops and
24 laptops using a Microsoft or macOS operating system) are not compatible with and
25 therefore do not work on game consoles (e.g., Microsoft Xbox or Sony PlayStation)
26 or on mobile devices (e.g., iPhones or Android devices). Accordingly, PC Games,
27 console games, and mobile games are not substitutes for each other.

28

1 47. In a recent court filing attempting to stop third-party discovery into its
2 business, Valve acknowledged that PC games do not compete with mobile games.
3 *See, e.g.*, February 18, 2021 Joint Letter Brief Regarding Apple’s Subpoena to Non-
4 Party Valve Corporation, *Epic Games, Inc. v. Apple, Inc.*, Case No. 4:20-cv-05640-
5 YGR, Docket 346 (the “Valve Letter”).

6 48. In the Valve Letter, Valve made the following admissions regarding the
7 definition of the relevant product market:

8 (a) “Valve is a privately held company with approximately 350
9 employees that develops PC video games. Valve does not make
10 or sell phones, tablets, or video games for mobile devices, or
11 otherwise compete in the mobile market. Valve also operates
12 Steam, an online platform that lets users purchase and play PC
13 games on their laptops and desktops. Steam users cannot buy or
14 use mobile apps on Steam.” Valve Letter at 5.

15 (b) “Apple, Google and Samsung compete with each other in the
16 mobile app market. Valve does not compete in that market. The
17 Court already recognized the relevant market must include the
18 product at issue. (Case No. 20-cv-05640-YGR) (Dkt. 118 at 12)
19 (citation omitted). Apple argues the relevant market could be so
20 broad as to include any video game available through any channel,
21 but gives no evidence this might actually be true. Indeed, the
22 Court noted there is ‘little evidence’ iOS users owned multiple
23 devices and changed from one to another in response to price
24 changes. *Id.* at 17 n.19.” Valve Letter at 6–7.

25 (c) “Somehow, in a dispute over mobile apps, a maker of PC games
26 that does not compete in the mobile market or sell ‘apps’ is being
27 portrayed as a key figure. It’s not.” Valve Letter at 7.

28

1 49. Valve's concession that the mobile market and PC games market are
2 different markets holds true for the console market as well. Valve does not sell,
3 market, or compete in the market for game-console games.

4 50. The relevant geographic market for both the relevant product market and
5 the alternative relevant product market is the United States and its territories.

6 51. The MFN imposed by Valve, and agreed to by game developers or
7 otherwise forced upon game developers, applies on a national basis.

8 52. Approximately 75% of all PC games sold in the United States are sold
9 through the Steam platform.

10 53. The relevant market is highly concentrated, with only a handful of
11 platforms and direct sales by game developers and other channels making up the
12 additional 25% share. Game developers do not need to use platforms to sell PC
13 games; indeed some PC games are sold directly by game developers to consumers
14 while others are sold by retailers such as Best Buy. Accordingly, there are not indirect
15 network effects in selling PC games on platforms.

16 54. As discussed below, Valve has market and monopoly power in the
17 relevant market because (a) it has a high market share; (b) it has the power to keep
18 prices anticompetitively high; and (c) it has the power to exclude rivals.

19 **ALLEGATIONS**

20 55. Defendant Valve owns and operates Steam. Steam is a platform for the
21 distribution of PC Games. The Steam platform was first released in 2003. Since then,
22 the Steam platform has become the dominant platform for third-party game publishing
23 and purchasing.

24 56. Through the Steam platform, Valve sells and distributes its own games,
25 as well as third-party games.

26 57. Valve, through the Steam platform, has an approximate 75% market
27 share for the sale of PC Games. Valve generates billions of dollars each year on
28

1 revenue from the Steam platform. And, worldwide, the Steam platform has hundreds
2 of millions of users.

3 58. Game developers, seeking access to consumers such as Plaintiffs and the
4 Class Members, market and sell their PC games on a platform.

5 59. Game developers rely on platforms, such as Steam. *See, e.g.*, Form 10-
6 K for the Fiscal Year Ended December 31, 2020, Activision Blizzard, Inc., at 20.

7 60. In order for game developers to sell on the Steam platform, Valve
8 requires that game developers pay Valve a commission (which Valve terms a “revenue
9 share”) on all earnings on the Steam platform. Before October 1, 2018, commissions
10 for sales on Steam were 30%. Effective as of October 1, 2018, Valve has three tiers
11 for its commission fee: 30% on all of a game’s earnings under \$10 million; 25% on
12 all of a game’s earnings between \$10 million and \$50 million; and 20% on all of a
13 game’s earnings over \$50 million.² The vast majority of sales to consumers on the
14 Steam platform are at the 30% commission rate.

15 61. Game developers overwhelmingly believe that the Steam platform does
16 not justify a 30% commission fee on their earnings.³ But because of the Steam
17 platform’s market and monopoly power, and Valve’s maintenance of that market and
18 monopoly power via the Steam MFN, game developers have no choice but to agree
19 to pay these commissions.

20 62. Valve does not set the price to consumers, game developers do.

21 63. One risk facing game developers is that some—but not all—of their
22 “channel partners . . . influence the fee structures for online distribution of games on

23 _____
24 ² *New Revenue Share Tiers and other updates to the Steam Distribution Agreement*,
25 Steam, [https://steamcommunity.com/groups/steamworks/announcements/detail/
26 1697191267930157838](https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838) (last visited March 22, 2021); *Valve now rewards successful
27 games with a larger cut of Steam revenue*, Polygon, [https://www.polygon.com/
28 2018/12/3/18123649/valve-steam-revenue-sharing](https://www.polygon.com/2018/12/3/18123649/valve-steam-revenue-sharing) (last visited March 22, 2021).

³ Game Developers Conference, *State of the Game Industry 2019*,
Survey_GDC19_Report-State_of_the_Game_Industry.pdf.

1 their platforms.” Form 10-K for the Fiscal Year Ended March 31, 2020, Take-Two
2 Interactive Software, Inc., at 15. Upon information and belief, Valve is one such
3 “channel partner” and it “retain[s] the right to change the fee structures for online
4 distribution of . . . content [that is] distribut[ed] on” Steam. *Id.*

5 64. Upon information and belief, through Valve’s actions and
6 communications, Valve explicitly instructs or tacitly requires, through its conduct and
7 communications, game developers to offer PC games on the Steam platform at the
8 lowest price that the PC game is offered for sale on any other third-party platform or
9 on the game developer’s own website (the “Steam MFN”), and explicitly or implicitly
10 threatens punishment for non-compliance.

11 65. Valve abuses its market power and maintains its monopoly by coercing
12 game developers to agree to the Steam MFN through various means and otherwise
13 preventing game developers from differential pricing across platforms (the
14 “monopolistic conduct”).

15 66. The Steam MFN and Valve’s monopolistic conduct requires that a game
16 developer’s products cannot be sold on other platforms unless the product is also
17 available for purchase on the Steam platform at no higher a price than is offered on
18 any other service, website, or platform. In other words, the Steam MFN and Valve’s
19 monopolistic conduct requires game developers to sell games through the Steam
20 platform at the lowest price being offered on other platforms.

21 67. One such example is that Valve requires game developers to abide by a
22 set of rules called the “Steamworks Documentation.” *See* Steamworks
23 Documentation, <https://partner.steamgames.com/doc/gettingstarted> (last visited
24 March 22, 2021).

25 68. The Steamworks Documentation contains the rules and requirements of
26 selling games on Steam. In order to sell games on Steam, game developers must
27 follow the Steamworks Documentation.

28

1 69. The Steamworks Documentation contains a number of provisions related
2 to Steam Keys and inter-platform pricing.

3 70. PC games are purchased through the Steam platform in two primary
4 ways. First, consumers can purchase games directly through Steam itself, through
5 which the consumer submits the consumer's payment, allowing the consumer to then
6 download and activate the game in Steam. Alternatively, a consumer may purchase a
7 PC game to be activated on the Steam platform from another online or brick-and-
8 mortar retailer through what is called a "Steam Key." A Steam Key is a software
9 activation key that consists of a series of letters and numbers that facilitates the
10 purchase of a PC game to be downloaded and played using the Steam platform
11 through a retailer other than Steam. These retailers can include brick-and-mortar
12 stores or online storefronts. Upon completion of the purchase from a third-party
13 retailer, the consumer receives a Steam Key that they then input into Steam to allow
14 the consumer to download and play the game in the Steam platform on their Steam
15 account.

16 71. Game developers agree to follow the following "Steam Key Rules and
17 Guidelines":

- 18 (a) You should use keys to sell your game on other stores in a similar
19 way to how you sell your game on Steam. It is important that you
20 don't give Steam customers a worse deal.⁴
- 21 (b) It's OK to run a discount on different stores at different times as
22 long as you plan to give a comparable offer to Steam customers
23 within a reasonable amount of time.

24 _____
25 ⁴ A prior version of this language read: "You are welcome to generate keys for resale
26 with other retailers, including your own website. However, your product must also
27 be available for sale on Steam. If you are hoping to receive exposure to Steam
28 customers, the price on Steam will have to match prices elsewhere." In other words,
Valve told game developers that they would be punished by losing "exposure to Steam
customers" if they did not price at par across platforms.

1 (c) Occasionally it may make sense to offer your game in a bundle or
2 subscription, timed at the right point in a game’s life cycle. Keep
3 in mind that the perceived price in the bundle/subscription should
4 be a price you are willing to run the game at a standalone price or
5 discount on Steam. Philosophically, you can think about it like
6 any other discount: if you’re making an aggressive offer in one
7 place, make it elsewhere too. **We want to avoid a situation**
8 **where customers get a worse offer on the Steam store, so feel**
9 **free to reach out to us via the Developer Support tool if you**
10 **want to talk through a specific scenario.**

11 (d) Steam keys shouldn’t be given away for free if you aren’t also
12 offering the same deal (i.e., give the game away for free) to Steam
13 customers.

14 Steamworks Documentation, <https://partner.steamgames.com/doc/features/keys>
15 (emphasis in original) (last visited March 22, 2021).

16 72. The Steamworks Documentation also states: “Please note that Steam
17 keys cannot be sold on other sites unless the product is also available for purchase on
18 Steam at no higher a price than is offered on any other service or website.”
19 Steamworks Documentation, [https://partner.steamgames.com/doc/features/keys](https://partner.steamgames.com/doc/features/keys#:~:text=Please%20note%20that%20Steam%20keys,any%20other%20service%20or%20website)
20 [#:~:text=Please%20note%20that%20Steam%20keys,any%20other%20service%20or%20website](https://partner.steamgames.com/doc/features/keys#:~:text=Please%20note%20that%20Steam%20keys,any%20other%20service%20or%20website) (last visited March 22, 2021).

22 73. The “Steam Key Rules and Guidelines” provide that game developers
23 selling Steam Keys on other platforms sell them at the same price they sell them for
24 on Steam. And they provide that if a game developer discounts a Steam Key on
25 another platform, it likewise discounts the Steam Key on the Steam platform “within
26 a reasonable amount of time.”

27 74. Developers agree to the “Steam Key Rules and Guidelines” under threat
28 of punishment. Valve states in the “Steam Key Rules and Guidelines” that it “reserves

1 the right to deny requests for keys or revoke key requesting privileges for partners
2 that are abusing them or disadvantaging Steam customers” (i.e. partners who do not
3 price at par across platforms). See Steamworks Documentation,
4 <https://partner.steamgames.com/doc/features/keys> (last visited on March 22, 2021.)

5 75. Upon information and belief, in 2018 Valve communicated with game
6 developers that the foregoing rules contained in the Steamworks Documentation
7 applied to **all** PC Games sold on **all** platforms. In other words, Valve considered the
8 terms of the Steamworks Documentation to include the Steam MFN. The
9 Steamworks Documentation, as interpreted by Valve and communicated by it to game
10 developers, requires game developers to pricing parity for their PC games across all
11 platforms, and not just for Steam Keys.

12 76. Because game developers are required to abide by the Steamworks
13 Documentation, game developers selling on Steam accepted Valve’s interpretation of
14 these terms, and accepted and agreed to abide by the Steam MFN.

15 77. Similarly, upon information and belief, Valve has otherwise abused its
16 market and monopoly power to force game developers to sell PC games at the same
17 price on Steam as on other platforms.

18 78. For example, upon information and belief, game developers have asked
19 Valve if they are allowed to sell PC games at a lower price on platforms other than
20 Steam. In response to those communications, Valve either explicitly or tacitly
21 communicates to the game developer that pricing parity is required.

22 79. Similarly, upon information and belief, Valve monitors game pricing and
23 enforces the Steam MFN. Upon information and belief, when Valve identifies games
24 being sold on other platforms at a lower price than on Steam, Valve takes steps to
25 bring the game pricing back into compliance by, for example, emailing or calling the
26 “offending” game developer and requiring the game developer to either (a) raise the
27 price on the other platform(s) or (b) lower the price on Steam.

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1 80. “[T]here is a Steamworks Developer group where [game developers] can
2 ask any questions that aren’t answered by the [Steamworks D]ocumentation. Valve
3 employees are frequently answering questions in there, along with many other
4 developers. It’s usually the quickest way to get a response as there are many people
5 keeping an eye on the discussions.”⁵

6 81. Upon information and belief, Valve uses its participation in this (and
7 perhaps other) group(s) to “remind” game developers about Valve’s pricing parity
8 requirements.

9 82. For example, a Valve employee, “TomG,” wrote on the developer group
10 forum: “If you sell your game for \$10 on our store and \$5 on another, that’s really
11 unfair to our customers, and we’d want to either match that lower price, or just stop
12 selling the game on Steam.” And he also wrote: “Think critically about how your
13 decisions might affect Steam customers, and Valve. If the offer you’re making
14 fundamentally disadvantages someone who bought your game on Steam, it’s probably
15 not a great thing for us or our customers (even if you don’t find a specific rule
16 describing precisely that scenario).”

17 83. In that same thread, TomG responded to a question stating: “we usually
18 choose not to sell games if they’re being sold on our store at a price notably higher
19 than other stores. That is, we’d want to get that lower base price as well, or not sell
20 the game at all.”

21 84. In other words, Valve’s position to game developers is that it gets the
22 best price or it will not sell the developers’ games. Valve’s policy hurts, not helps,
23 consumers, because consumers would benefit from lower-priced options for the same
24 products.

25 85. The game developer community is close-knit. Game developers are
26 aware of how Valve treats their peers, and thus Valve’s tactics prevent game

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28 ⁵ Steamworks Documentation, <https://partner.steamgames.com/doc/gettingstarted/faq>
(last visited March 22, 2021).

1 developers from violating the Steam MFN or otherwise pricing at lower levels on
2 other platforms.

3 86. Game developers have manifested their assent to the Steam MFN by
4 following its rules regarding pricing parity; indeed, by their pricing conduct, game
5 developers demonstrate that the Steam MFN applies to all PC games, and not just
6 Steam Keys.

7 87. For example, on December 17, 2020, Ubisoft (a game developer)
8 discounted its game “Far Cry 4” from \$29.99 (the list price it was selling for on Steam
9 and Epic) to \$8.99 on the Epic platform. Consistent with the Steam MFN, five days
10 later, Ubisoft discounted this game to \$8.99 on the Steam platform. Games sold on
11 the Epic platform do not use Steam Keys.

12 88. As another example, on March 19, 2019, Ubisoft discounted its game
13 “Far Cry New Dawn” from \$39.99 (the list price it was selling for on Steam and
14 Uplay) to \$19.99 on Ubisoft’s own storefront, Uplay. Consistent with the Steam
15 MFN, three days later, Ubisoft discounted this game to \$19.99 on the Steam platform.
16 Games sold on Uplay do not use Steam keys.

17 89. As another example, on September 9, 2020, Ubisoft discounted its game
18 “Steep” from \$29.99 (the list price it was selling for on Steam and Uplay) to \$6.00 on
19 Uplay. Consistent with the Steam MFN, the next day, Ubisoft discounted this game
20 to \$5.99 on the Steam platform.

21 90. As another example, on November 18, 2020, Ubisoft discounted its game
22 “I Am Alive” from \$14.99 (the list price it was selling for on Steam and Uplay) to
23 \$3.75 on Uplay. Consistent with the Steam MFN, seven days later, Ubisoft discounted
24 this game to \$3.74 on the Steam platform.

25 91. As another example, on October 7, 2020, Ubisoft discounted its game
26 “Tom Clancy’s Ghost Recon® Wildlands – Fallen Ghost” from \$14.99 (the list price
27 it was selling for on Steam and Uplay) to \$4.50 on Uplay. Consistent with the Steam
28 MFN, eight days later, Ubisoft discounted this game to \$4.49 on the Steam platform.

1 92. As another example, on March 16, 2020, CD Projekt (a game developer)
2 discounted its game “The Witcher 3: Wild Hunt” from \$39.99 (the list price it was
3 selling for on Steam and GOG) to \$11.99 on the GOG platform. Consistent with the
4 Steam MFN, seven days later, CD Projekt discounted this game to \$11.99 on the
5 Steam platform. Games sold on GOG do not use Steam keys.

6 93. As another example, on February 10, 2021, Devolver (a game developer)
7 discounted its game “Disc Room” from \$14.99 (the list price it was selling for on
8 Steam and GOG) to \$11.99 on GOG. Consistent with the Steam MFN, the next day,
9 Devolver discounted this game to \$11.99 on the Steam platform.

10 94. As another example, on December 8, 2020, Devolver discounted its
11 game “Carrion” from \$19.99 (the list price it was selling for on Steam and GOG) to
12 \$14.99 on GOG. Consistent with the Steam MFN, the next day, Devolver discounted
13 this game to \$14.99 on the Steam platform.

14 95. There are numerous other examples of game developers pricing in
15 accordance with the Steam MFN.

16 96. As explained below, the Steam MFN is anticompetitive because it
17 prevents rival platforms from competing with the Steam platform on price. Likewise,
18 Valve’s other monopolistic conduct in forcing game developers to pricing parity
19 across platforms is anticompetitive because it prevents rival platforms from
20 competing with the Steam platform on price. This lack of competition thereby harms
21 consumers by keeping the prices they pay for PC games higher than they would be in
22 a competitive market.

23 97. The Steam MFN and Valve’s monopolistic conduct harms consumers in
24 a variety of ways by preventing price competition, hindering innovation, and
25 suppressing output.

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The Steam MFN and Valve’s Monopolistic Conduct Prevents Price Competition

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2 98. The Steam MFN and Valve’s monopolistic conduct prevents price
3 competition for PC Games. The Steam MFN and Valve’s monopolistic conduct
4 disincentivize game developers from dropping the price of PC games on other
5 platforms to take advantage of lower commissions offered by competitors to the
6 Steam platform.

7 99. Indeed, other platforms have attempted to compete with the Steam
8 platform via lower commissions.

9 100. In 2018, Epic Games opened the Epic Games Store (“EGS”). Through
10 EGS, Epic Games sells and distributes its own games as well as third-party games.
11 Epic Games charges a 12% commission to game developers on all earnings and is a
12 direct competitor to the Steam platform.

13 101. In an interview given shortly after EGS opened, Tim Sweeney, CEO of
14 Epic, stated that “[f]ixed costs of developing and supporting the platform become
15 negligible at a large scale. In our analysis, stores charging 30 per cent are marking up
16 their costs by 300 to 400 per cent,” and that stores could be profitable earning a 12%
17 commission.⁶

18 102. Despite the significantly lower commission structure, PC games sold on
19 EGS sell at the same price as they are sold for on the Steam platform as required by
20 the anticompetitive Steam MFN.

21 103. Discord Inc. owned and operated the Discord store, which sold and
22 distributed third-party games only. Around 2018, Discord began to tout itself as an
23 alternative to the Steam platform. Notably, Discord offered game developers a 90/10
24 revenue split (i.e., it charged a 10% commission to game developers on all earnings),
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26 ⁶ *New Epic Games Store Takes on Steam With Just 12% Revenue Share*,
27 MCV/Develop (Dec. 4, 2018) <https://www.mcvuk.com/development-news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions/> (last accessed Jan. 20, 2021).
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1 which was an aggressive strategy that curried favor with both big and small game
2 developers. Discord was thus a direct competitor to the Steam platform.

3 104. When game developers released on Discord to take advantage of
4 Discord's lower commission structure, Valve would reach out to the game developer
5 for violating Valve's parity pricing requirements, chilling the game developer's ability
6 to do business with Discord.

7 105. In 2019, Discord shuttered its store. Upon information and belief,
8 because of the Steam MFN, Discord's low-price strategy was unable to drive volume
9 to the Discord store. Because of the Steam MFN and Valve's anticompetitive conduct,
10 game developers could not take advantage of Discord's extremely generous revenue
11 split. In other words, the Steam MFN and Valve's anticompetitive conduct prevented
12 Discord from competing for game developer sales.

13 106. Despite Epic Games only charging a 12% commission, the following
14 games (for example) were selling for the identical price on Steam and on EGS:

<u>Game Title</u>	<u>Steam Price</u> (30% Commission)	<u>Epic Price</u> (12% Commission)
The Outer Worlds	\$59.99	\$59.99
Borderlands 3	\$59.99	\$59.99
Remnant: From the Ashes	\$39.99	\$39.99
Surviving Mars	\$29.99	\$29.99
Amnesia: Rebirth	\$29.99	\$29.99
Oxygen Not Included	\$24.99	\$24.99

<u>Game Title</u>	<u>Steam Price</u> (30% Commission)	<u>Epic Price</u> (12% Commission)
Tom Clancy's Rainbow Six Siege	\$19.99	\$19.99

107. Game developers are not independently choosing to price PC games at the same level across platforms; they are required to do so because of their agreement to the Steam MFN and because of Valve's monopolistic conduct.

108. Without the Steam MFN and without Valve's monopolistic conduct aimed at pricing parity, it would be in game developers' independent economic interest to offer their PC games at lower prices on platforms that charge a lower commission than the Steam platform because they could generate the same or even greater revenue per game as a result of the lower commissions, while lowering prices to consumers. Because of the Steam MFN and Valve's monopolistic conduct, game developers must account for the Steam platform's supracompetitive commissions and cannot and do not lower prices on rival platforms.

109. The following chart illustrates how the Steam MFN and Valve's monopolistic conduct prevents price competition:

	<u>Steam</u>	<u>Rival Platform</u>
Commission %	30%	12%
Sale \$ to Consumer	\$10.00	\$10.00
Developer Income	\$7.00	\$8.80

110. In other words, the Steam MFN and Valve's monopolistic conduct prevents rival platforms from increasing volume on their platforms by offering lower commission fees—because the PC game must be priced at the same level to consumers regardless of the commission the game developer pays, game developers cannot take advantage of the lower commission levels on other platforms. The Steam MFN and Valve's monopolistic conduct thus prevents inter-platform competition.

1 111. The following chart shows how, in a world without the Steam MFN and
 2 without Valve’s monopolistic conduct, game developers could earn higher profit at
 3 lower commissions, while increasing sales and benefitting consumers:

	Steam	Rival Platform
Commission %	30%	12%
Sale \$ to Consumer	\$10.00	\$8.00
Developer Income	\$7.00	\$7.04

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 8 112. Thus, at a 12% commission, a game developer could lower its price by
 9 20% and still earn more profit. And, of course, consumers would benefit by lower
 10 prices.

11 113. Indeed, in a January 30, 2019 tweet, Tim Sweeney, CEO of Epic,
 12 complained about how the Steam MFN and Valve’s monopolistic conduct prevents
 13 price competition stating that “Steam has veto power over prices,” preventing “multi-
 14 store [game] developer[s from] sell[ing] their game[s] for a lower price on the Epic
 15 Games store” And three days later, also on Twitter, Mr. Sweeney discussed that
 16 “the only way for creators to pass savings on to gamers is by avoiding the dominant
 17 store [e.g., the Steam platform].”⁷

18 114. Finally, on January 11, 2020, Mr. Sweeney tweeted about how price
 19 competition would work in a competitive market: “If the 88%/12% store wars were a
 20 coin toss, here’s it goes: Heads, other stores don’t respond, so Epic Games Store wins
 21 and all developers win. Tails, competitors match us, we lose our revenue sharing
 22 advantage, and maybe other stores win, but all developers still win.”⁸

23
 24 ⁷ @TimSweeneyEpic, TWITTER (Jan. 30, 2019, 12:29 PM),
 25 <https://twitter.com/TimSweeneyEpic/status/1090663312814157824>;

26 @TimSweeneyEpic, TWITTER (Feb. 2, 2019, 12:30 PM),
 27 <https://twitter.com/TimSweeneyEpic/status/1091750761392979968>

28 ⁸ @TimSweeneyEpic, TWITTER (Jan. 11, 2020, 3:07 PM)
<https://twitter.com/TimSweeneyEpic/status/1216089159946948620>

1 115. Another example of Valve’s monopolistic conduct involves Ubisoft.

2 116. Over the last three years, Ubisoft, a publicly traded company, averaged
3 €1.76 billion in “Net Bookings” (i.e. “sales”).⁹

4 117. “For Years, Ubisoft released blockbuster titles like Assassin’s Creed and
5 Splinter Cell on Steam.” However, Ubisoft “decided not to sell the sequel to its hit
6 game Tom Clancy’s The Division on [Steam] because Valve would not modify its
7 revenue-sharing model” according to Ubisoft’s vice president for partnerships and
8 revenue, Chris Early. Ubisoft sold this hit PC game on Epic and its own platform.¹⁰
9 Ubisoft was only able to do so because, in this limited circumstance, the popularity
10 of the game and Ubisoft’s ability to make higher margins on Epic and its own
11 platform, outweighed Valve’s market share and high revenue share.

12 118. Despite Ubisoft not selling the sequel to Tom Clancy’s The Division on
13 Steam, and selectively refusing to release other popular new PC games on Steam, for
14 games Ubisoft continues to sell on Steam, it sells them at the same price across
15 platforms, thereby evidencing either an explicit or tacit agreement to maintain pricing
16 parity across platforms:

<u>Game Title</u>	<u>Steam Price</u>	<u>Uplay Price</u>	<u>Epic Price</u>
Space Junkies	\$19.99	\$19.99	N/S ¹¹
Trials Rising	\$19.99	\$19.99	\$19.99
Far Cry New Dawn	\$39.99	\$39.99	\$39.99

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⁹ <https://www.ubisoft.com/en-us/company/about-us/investors#collapse-keyFiguresAnnualReports>;
https://staticctf.akamaized.net/8aefmxkxpxwl/JdRZ01IK6RqlqhbMmjVvV/e4c8b942be090b6c1cb6d7035b1ec825/Ubisoftkeyfiguressept302020_tcm99-28749_tcm99-196733-32.xlsx (last accessed March 11, 2021)

¹⁰ The New York Times, *Fortnite Maker Wants to Sell More Games, and Build a Platform to Do It*, Published Aug. 27, 2019, Updated Aug. 13, 2020.

¹¹ The written abbreviation “N/S” indicates that the game is “Not for Sale” on a particular platform.

<u>Game Title</u>	<u>Steam Price</u>	<u>Uplay Price</u>	<u>Epic Price</u>
Assassin's Creed Odyssey	\$59.99	\$59.99	\$59.99
Transference	\$24.99	\$24.99	N/S
The Crew 2	\$49.99	\$49.99	\$49.99
Far Cry 5	\$59.99	\$59.99	\$59.99
Discovery Tour By Assassin's Creed: Ancient Egypt	\$19.99	\$19.99	N/S
Assassin's Creed Origins	\$59.99	\$59.99	\$59.99
South Park The Fractured But Whole	\$49.99	\$49.99	\$49.99
Atomega	\$9.99	\$9.99	N/S
Monopoly Plus	\$14.99	\$14.99	\$14.99
Star Trek: Bridge Crew	\$24.99	\$24.99	N/S
Tom Clancy's Ghost Recon Wildlands	\$49.99	\$49.99	\$49.99
Uno	\$9.99	\$9.99	\$9.99
Eagle Flight	\$19.99	\$19.99	N/S
Werewolves Within	\$19.99	\$19.99	N/S
Steep	\$29.99	\$29.99	\$29.99
Watch_Dogs 2	\$49.99	\$49.99	\$59.99
Just Dance 2017	\$49.99	\$49.99	N/S
Champions of Anteria	\$29.99	\$29.99	N/S
Trials of The Blood Dragon	\$14.99	\$14.99	N/S
Trackmania Turbo	\$39.99	\$39.99	\$39.99
Tom Clancy's The Division	\$29.99	\$29.99	\$29.99
Assassin's Creed Chronicles: Russia	\$9.99	\$9.99	N/S
Assassin's Creed Chronicles: India	\$9.99	\$9.99	N/S
Tom Clancy's Rainbow Six Siege	\$19.99	\$19.99	\$19.99
Assassin's Creed Syndicate	\$29.99	\$29.99	\$29.99
Anno 2205	\$39.99	\$39.99	\$39.99
Zombi	\$19.99	\$19.99	\$19.99
Assassin's Creed Chronicles: China	\$9.99	\$9.99	N/S
Assassin's Creed Rogue	\$19.99	\$19.99	\$19.99
Far Cry 4	\$29.99	\$29.99	\$29.99
Assassin's Creed Unity	\$29.99	\$29.99	\$29.99
Valiant Hearts: The Great War	\$14.99	\$14.99	\$14.99

<u>Game Title</u>	<u>Steam Price</u>	<u>Uplay Price</u>	<u>Epic Price</u>
Watch_Dogs	\$29.99	\$29.99	N/S
Child of Light	\$14.99	\$14.99	N/S
Trials Fusion	\$19.99	\$19.99	N/S
South Park: The Stick of Truth	\$29.99	\$29.99	\$29.99
Assassin's Creed Freedom Cry	\$14.99	\$14.99	N/S
Might & Magic X- Legacy	\$24.99	\$24.99	N/S
Assassin's Creed Liberation HD	\$19.99	\$19.99	N/S
Assassin's Creed IV Black Flag	\$19.99	\$19.99	N/S
Flashback	\$9.99	\$9.99	N/S
Rayman Legends	\$29.99	\$29.99	\$29.99
Tom Clancy's Splinter Cell Blacklist	\$29.99	\$29.99	N/S
Trackmania Valley	\$19.99	\$19.99	N/S
Trackmania Stadium	\$9.99	\$9.99	N/S
Might & Magic: Heroes VI - Shades of Darkness	\$14.99	\$14.99	N/S
Far Cry 3- Blood Dragon	\$14.99	\$14.99	\$14.99
Trials Evolution: Gold Edition	\$19.99	N/S	\$19.99
Trackmania Canyon	\$19.99	\$19.99	N/S
Far Cry 3	\$19.99	\$19.99	\$19.99
I Am Alive	\$14.99	\$14.99	N/S
Tom Clancy's Ghost Recon	\$19.99	\$19.99	N/S
Rayman Origins	\$19.99	\$19.99	\$19.99
Assassin's Creed Revelations	\$19.99	\$19.99	N/S
Anno 2070 - Complete Edition	\$29.99	\$29.99	N/S
Might & Magic: Heroes VI	\$19.99	\$19.99	N/S
From Dust	\$14.99	\$14.99	N/S
Assassin's Creed Brotherhood	\$19.99	\$19.99	N/S
Prince of Persia: The Forgotten Sands	\$9.99	\$9.99	N/S
Tom Clancy's Splinter Cell Conviction Deluxe Edition	\$19.99	\$19.99	N/S
Tom Clancy's Splinter Cell Conviction	\$19.99	\$19.99	N/S
Assassin's Creed 2 Deluxe Edition	\$19.99	\$19.99	N/S

<u>Game Title</u>	<u>Steam Price</u>	<u>Uplay Price</u>	<u>Epic Price</u>
Silent Hunter 5: Battle of the Atlantic	\$9.99	\$9.99	N/S
Tom Clancy's Splinter Cell Chaos Theory	\$9.99	\$9.99	N/S
Tom Clancy's Endwar	\$9.99	\$9.99	N/S
Tom Clancy's Splinter Cell Double Agent	\$9.99	\$9.99	N/S
Driver Parallel Lines	\$9.99	\$9.99	N/S
Prince of Persia	\$9.99	\$9.99	N/S
Prince of Persia: The Sands of Time	\$9.99	\$9.99	N/S
Prince of Persia: Warrior Within	\$9.99	\$9.99	N/S
Prince of Persia: The Two Thrones	\$9.99	\$9.99	N/S
Far Cry 2: Fortune's Edition	\$9.99	\$9.99	\$9.99
Heroes of Might & Magic V: Tribes of the East	\$9.99	\$9.99	N/S
Heroes of Might & Magic V: Hammers of Fate	\$9.99	\$9.99	N/S
Brothers In Arms: Earned In Blood	\$9.99	\$9.99	N/S
Brothers in Arms: Hell's Highway	\$9.99	\$9.99	N/S
Tom Clancy's Rainbow Six 3 Gold	\$9.99	\$9.99	N/S
Silent Hunter: Wolves of the Pacific	\$9.99	\$9.99	N/S
Rayman Raving Rabbids	\$9.99	\$9.99	N/S
Silent Hunter: Wolves of the Pacific U-Boat Missions	\$9.99	\$9.99	N/S
Tom Clancy's Rainbow Six Lockdown	\$9.99	\$9.99	N/S
Beyond Good and Evil	\$9.99	\$9.99	\$9.99
Heroes of Might & Magic V	\$9.99	\$9.99	N/S
Brothers In Arms: Road To Hill 30	\$9.99	\$9.99	N/S
Cold Fear	\$9.99	\$9.99	N/S
Tom Clancy's Rainbow Six Vegas 2	\$9.99	\$9.99	N/S
Tom Clancy's Rainbow Six Vegas	\$9.99	\$9.99	N/S
Assassin's Creed: Director's Cut Edition	\$19.99	N/S	\$19.99
Far Cry	\$9.99	\$9.99	\$9.99

<u>Game Title</u>	<u>Steam Price</u>	<u>Uplay Price</u>	<u>Epic Price</u>
Tom Clancy's Splinter Cell	\$9.99	\$9.99	N/S
Dark Messiah of Might & Magic	\$9.99	\$9.99	N/S

119. Thus, where Ubisoft sells games on Steam, it sells them at the same price despite the significantly lower commissions it pays on its own platform and on Epic.

120. Similarly, in compliance with the Steam MFN (including Valve's rules requiring inter-platform pricing parity), when other game developers sell across platforms, they sell PC games at the same price or, in the case of discounts on other platforms, they discount the price on Steam shortly thereafter.

121. For games not sold on Steam, Ubisoft's pricing varies. When Ubisoft is selling PC games on platforms other than Steam, it will sometimes take advantage of lower commissions—in Ubisoft's case, 0% on Uplay as compared to 12% on Epic—to price games at a lower price point on the less expensive platform.

122. For example, on January 28, 2021 (the day the original complaint in this action was filed), Ubisoft discounted its PC game "Assassin's Creed Valhalla" from \$59.99 (the list price it was selling for on Uplay and Epic) to \$49.79 on its Uplay platform. Ubisoft again discounted this game on February 11, 2021, to \$44.99 on its Uplay platform while also discounting this game to \$49.79 on the Epic platform.

123. As another example, again on January 28, 2021, Ubisoft discounted its PC game "Watch Dogs: Legion" from \$59.99 (the list price it was selling for on Uplay and Epic) to \$40.19 on its Uplay platform. Ubisoft again discounted this game on February 17, 2021, to \$35.99 on its Uplay platform while also discounting this game to \$40.19 on the Epic platform.

124. If platforms were to compete for game developers via lower commissions in a competitive market unfettered by the Steam MFN and Valve's monopolistic conduct, the Steam platform would have to either lower its commissions or otherwise increase the value of its platform to consumers. The Steam MFN and

1 Valve's monopolistic conduct saves the Steam platform from competing on the merits
2 with other platforms.

3 **The Steam MFN and Valve's Monopolistic Conduct Hinder Innovation**

4 125. The Steam MFN and Valve's monopolistic conduct also hinder
5 innovation by creating an artificial barrier to entry for platforms. When a market,
6 such as this one, is highly concentrated, a new entrant can benefit consumers by
7 undercutting the incumbent's prices. The ability to provide PC games to consumers
8 at lower prices is one way a firm or new entrant could gain market share. If this
9 market functioned properly—that is, if Valve did not abuse its market and monopoly
10 power, the Steam MFN did not exist, and platforms were able to compete on price—
11 platforms competing with Steam would be able to provide the same (or higher)
12 margins to game developers while simultaneously providing lower prices to
13 consumers.

14 126. As discussed above, Discord entered the market in 2018 charging a 10%
15 commission—a commission that was two-thirds less than Steam's. Discord quickly
16 left the market, upon information and belief, because of the anticompetitive effect of
17 the Steam MFN and Valve's monopolistic conduct. Despite Discord's low
18 commission, game developers had to price their games at the same level as they did
19 on the Steam platform. Accordingly, Discord, as a new market entrant with a low-
20 cost solution, was unable to gain critical mass among consumers because game
21 developers were unable to take advantage of Discord's lower cost structure.

22 **The Steam MFN and Valve's Monopolistic Conduct Suppresses Output**

23 127. Finally, the Steam MFN and Valve's monopolistic conduct suppresses
24 output—it is a basic tenet of economics that lower prices lead to increased sales.
25 Accordingly, because of Valve's abuse of its market and monopoly power and the
26 Steam MFN's effect on prices, fewer PC games are sold (both in volume and in titles)
27 than would be sold in a competitive market.

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1 128. The Discord example also illustrates this point. Without Valve’s abuse
2 of its market and monopoly power and the Steam MFN, Discord’s competitive pricing
3 would have enticed game developers to price PC games at a lower level than they did
4 on the Steam platform, because game developers would have been able to preserve
5 their margins while selling more games. Absent Valve’s abuse of its market and
6 monopoly power and the Steam MFN, a game developer that sold a game for \$10 on
7 the Steam platform could have sold the same game for \$7.78 on the Discord platform
8 and made the same \$7 in gross profit. The lower price, economic theory holds, would
9 have increased demand for that game, thereby increasing the volume of sales.

10 129. In a world without Valve’s abuse of its market and monopoly power and
11 the Steam MFN, game developers would sell more PC games at the same level of
12 profit, consumers would spend less money per PC Game, and consumers would
13 purchase more PC Games. Valve’s abuse of its market and monopoly power and the
14 Steam MFN thus harm consumers.

15 CLASS ACTION ALLEGATIONS

16 130. Plaintiffs seek to represent two classes and two sub-classes (the “Class
17 Members”) under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) for
18 violations of 15 U.S.C. §§ 1 & 2.

19 (a) The first class, “Class I,” seeks damages for violations of 15
20 U.S.C. §§ 1 & 2 and is defined as:

21 All persons that have purchased PC games in the United States and its
22 territories at any time from and after four years before the filing of this
23 lawsuit. This Class does not include the named Defendant, its directors,
24 officers, or members of their families, or the United States Government.

25 (b) The Parent Purchaser Sub-Class of Class I is defined as:

26 All parents/guardians who (a) are not Steam platform users, and thus
27 have not agreed to the Steam Subscriber Agreement, and (b) have
28 purchased PC games in the United States and its territories for their

1 children/dependents at any time from and after four years before the
2 filing of this lawsuit. This Class does not include the named Defendant,
3 its directors, officers, or members of their families, or the United States
4 Government.

5 (c) The second class, “Class II,” seeks declaratory and injunctive
6 relief for violations of 15 U.S.C. §§ 1 & 2 and is defined as:

7 All persons that are currently purchasing PC games in the United States
8 and its territories at any time from and after four years before the filing
9 of this lawsuit. This Class does not include the named Defendant, its
10 directors, officers, or members of their families, or the United States
11 Government.

12 (d) The Parent Purchaser Sub-Class of Class II is defined as:

13 All parents/guardians who (a) are not Steam platform users, and thus
14 have not agreed to the Steam Subscriber Agreement, and (b) are currently
15 purchasing PC games in the United States and its territories for their
16 children/dependents at any time from and after four years before the
17 filing of this lawsuit. This Class does not include the named Defendant,
18 its directors, officers, or members of their families, or the United States
19 Government.

20 131. Plaintiffs Sean Colvin, Everett Stephens, and Ryan Lally bring this
21 action under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of
22 themselves and all others similarly situated. These Plaintiffs are members of the
23 Classes, their claims are typical of the claims of the other Class Members, and
24 Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs are
25 represented by counsel whom are competent and experienced in the litigation of class-
26 action and antitrust litigation. Plaintiffs’ interests are coincident with, and not
27 antagonistic to, those of the other Class Members.

1 132. Plaintiffs Susann Davis and Hope Marchionda bring this action under
2 Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of themselves and
3 all others similarly situated. These Plaintiffs are members of the Parent Purchaser
4 Sub-Classes, their claims are typical of the claims of the other Parent Purchaser Sub-
5 Class Members, and Plaintiffs will fairly and adequately protect the interests of the
6 Parent Purchaser Sub-Classes. Plaintiffs are represented by counsel whom are
7 competent and experienced in the litigation of class-action and antitrust litigation.
8 Plaintiffs' interests are coincident with, and not antagonistic to, those of the other
9 Class Members in both the Class and the Parent Purchaser Sub-Class.

10 133. The anticompetitive conduct of Defendant alleged herein has imposed,
11 and threatens to continue to impose, a common antitrust injury on the Class Members.

12 134. The Class Members number in the tens of millions and are thus so
13 numerous that joinder of all members is impracticable.

14 135. The identity of all Class Members is known by the Defendant.
15 Defendant can identify the Class Members via its internal records, including, but not
16 limited to, their financial, membership, and purchase history records.

17 136. Defendant's relationships with the Class Members and Defendant's
18 anticompetitive conduct has been substantially uniform. Common questions of law
19 and fact will predominate over any individual questions of law and fact. Defendant
20 has acted and continues to act on grounds generally applicable to Class Members,
21 thereby making appropriate final injunctive relief with respect to Class Members as a
22 whole.

23 137. There will be no extraordinary difficulty in the management of this Class
24 Action. Common questions of law and fact exist with respect to all Class Members
25 and predominate over any questions solely affecting individual class members.
26 Among the questions of law and fact common to Class members are the following:

27 (a) Monopolization issues:

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1. Whether Valve’s Steam platform has market power in the relevant product and geographic markets;
2. Whether Valve has unlawfully monopolized, attempted to monopolize, or illegally maintained its monopoly in the market for sale of PC games to consumers, including by way of contractual terms, policies, practices, mandates, and restraints described herein in the United States and its territories;
3. Whether competition in the market for sale of PC games to consumers has been restrained and harmed by Valve’s monopolization, or attempted monopolization;
4. Whether consumers and Class members have been damaged by Defendant’s conduct;
5. The amount of any damages; and
6. The nature and scope of injunctive relief necessary to restore a competitive market.

(b) Agreement issues:

1. Whether game developers agreed to the Steam MFN;
2. Whether Valve required, forced, or coerced game developers to unlawfully contract, combine, or conspire to unreasonably restrain trade in violation of Section 1 of the Sherman Act by agreeing under the Steam MFN that game developers would not sell their PC game products through competing platforms at a price lower than what they offered through Valve’s Steam platform;
3. Whether Valve required, forced, or coerced game developers to unlawfully contract, combine, or conspire to unreasonably restrain trade in violation of Section 1 of the

1 Sherman Act by agreeing under the Steam MFN that Valve
2 would penalize game developers if they offered their PC
3 game products through competing platforms at a price
4 lower than what they offered through Valve's Steam
5 platform;

- 6 4. Whether competition in the market for sale of PC games to
7 consumers has been restrained and harmed by Defendant's
8 contract, combination, or conspiracy to unreasonably
9 restrain trade in violation of Section 1 of the Sherman Act;
10 5. Whether consumers and Class members have been
11 damaged by Defendant's conduct;
12 6. The amount of any damages; and
13 7. The nature and scope of injunctive relief necessary to
14 restore a competitive market.

15 138. These and other questions of law and fact are common to Class Members
16 and predominate over any issues affecting only individual class members.

17 139. The prosecution of separate actions by individual Class Members would
18 create a risk of inconsistent or varying adjudications, establishing incompatible
19 standards of conduct for Defendant.

20 140. This Class Action is superior to any other method for the fair and
21 efficient adjudication of this legal dispute, as joinder of all members is not only
22 impracticable, but impossible. The damages suffered by many Class Members are
23 small in relation to the expense and burden of individual litigation, and therefore, it is
24 highly impracticable for such Class Members to individually attempt to redress the
25 wrongful anticompetitive conduct alleged herein.

CLAIMS FOR RELIEF

Count 1: Violation of Section 2 of the Sherman Act

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3 141. Plaintiffs incorporate by reference the allegations contained herein as if
4 fully rewritten in this paragraph.

5 142. Valve, utilizing the Steam platform, has monopolized the relevant
6 market. Valve is abusing its market and monopoly power and likewise using the
7 Steam MFN to maintain its monopoly.

8 143. Valve has monopoly power in the relevant market.

9 144. The combination of its market share, its conduct towards game
10 developers, and the Steam MFN allow Valve to price commissions to game developers
11 (and thus the ultimate sale price to consumers) in an anticompetitive manner.

12 145. Valve’s abuse of its market and monopoly power and the Steam MFN
13 keeps Valve’s commission revenue from falling.

14 146. The facts that Epic charges a 12% commission and Discord charged a
15 10% commission show that Valve is a monopolist. In other words, Valve’s
16 commissions, and thus consumer prices, are substantially above the competitive level.

17 147. In a world without Valve abusing its market and monopoly power,
18 platform commissions (and thus consumer prices) may be even lower than the lower
19 commissions charged by rival platforms in the actual world, as competitive forces
20 would push platforms to price their commissions based on their costs and in reaction
21 to how their competition is acting.

22 148. In a world without the Steam MFN, platform commissions (and thus
23 consumer prices) may be even lower than the lower commissions charged by rival
24 platforms in the actual world, as competitive forces would push platforms to price
25 their commissions based on their costs and in reaction to how their competition is
26 acting.

27 149. The ability of Valve to require game developers to agree to the Steam
28 MFN demonstrates its monopolization of the market.

1 150. The ability of Valve to otherwise require game developers to pricing
2 parity across platforms demonstrates its monopolization of the market.

3 151. Valve maintains its monopoly by engaging in exclusionary and
4 anticompetitive conduct.

5 152. As discussed herein, the Steam MFN and Valve's abuse of its market
6 power and monopolistic conduct prevents commission competition, which would
7 lower both the Steam platform's market share and Valve's profits. This conduct both
8 excludes rival platforms—both those in existence and potential new market
9 entrants—and is by its very nature anticompetitive. In a world where platforms
10 competed on commissions—a world without the Steam MFN and in a world without
11 Valve acting anticompetitively—consumer prices would be lower and output would
12 be higher.

13 153. By imposition of the Steam MFN, Valve has amassed and/or maintained
14 monopoly power and is actually using that power to hinder competition.

15 154. Similarly, as alleged above, Valve has abused its market power to prevent
16 competition and maintain its monopoly.

17 155. Valve's conduct is designed to (a) monopolize the market, and (b)
18 maintain its monopoly in the market. Accordingly, Valve has violated Section 2 of
19 the Sherman Act.

20 156. Every day the Steam MFN remains in effect, Valve will continue to
21 violate Section 2 of the Sherman Act.

22 157. Likewise, every day that Valve abuses its monopoly power to prevent
23 price competition, to suppress output, and to hinder innovation, Valve will continue
24 to violate Section 2 of the Sherman Act.

25 **Count 2: Violation of Section 1 of the Sherman Act**

26 158. Plaintiffs incorporate by reference the allegations contained herein as if
27 fully rewritten in this paragraph.

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1 159. Game developers either explicitly or tacitly agree with Valve to the
2 Steam MFN.

3 160. The Steam MFN, as discussed herein, is anticompetitive. It has the effect
4 of game developers charging consumers more than the game developers would in a
5 competitive market.

6 161. Valve, by requiring, forcing, or coercing game developers to restrain
7 trade and cause increased consumer prices, has violated Section 1 of the Sherman Act.

8 162. Every day the Steam MFN remains in effect, Valve will continue to
9 violate Section 1 of the Sherman Act.

10 **PRAYER FOR RELIEF**

11 163. WHEREFORE, Plaintiffs, on behalf of themselves and the Classes and
12 Subclasses, pray for relief and judgment as follows:

- 13 (a) Judgment in favor of each Plaintiff and each Class Member
14 against the Defendant in an amount to be determined at trial
15 including, but not limited to, compensatory damages for past and
16 future injury, trebled damages, and pre-judgment and post-
17 judgment interest, as permitted by law;
- 18 (b) A declaration that the Steam MFN is anticompetitive and
19 constitutes illegal monopolization and monopoly maintenance in
20 violation of Section 2 of the Sherman Act;
- 21 (c) A declaration that the Steam MFN is anticompetitive and
22 constitutes an illegal contract in restraint of trade in violation of
23 Section 1 of the Sherman Act;
- 24 (d) A declaration that Valve cannot use its market power to require
25 game developers to pricing parity across platforms.
- 26 (e) Permanent injunctive and equitable relief sufficient to eliminate
27 the anticompetitive effects of the Defendant's actions, including
28 but not limited to:

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1. Enjoining the Steam MFN;
 2. Enjoining the Defendant from instituting or agreeing to any new anticompetitive provision that would have the effect of suppressing price competition in the market;
 3. Enjoining the Defendant from influencing or controlling game developers’ prices;
 4. Requiring the Defendant to take affirmative action to facilitate competition in the market;
- (f) An award of the cost of the suit, including reasonable attorney’s fees; and
- (g) Such other and further relief as this court deems just, equitable, and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38-1, Plaintiffs demand a trial by jury of all issues so triable.

VORYS, SATER, SEYMOUR AND PEASE
LLP

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Attorneys for Plaintiffs and Putative Class

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *First Amended Class Complaint for Damages and Injunctive Relief* has been served via the CM/ECF system, pursuant to L.R. 5-3.2.1, this 8th day of April, 2021, upon the following:

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