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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 EPIC GAMES, INC.,
16 Plaintiff, Counter-Defendant,
17 v.
18 APPLE INC.,
19 Defendant, Counterclaimant.

Case No.: 4:20-CV-05640-YGR-TSH
Judge: Hon. Yvonne Gonzalez Rogers
Hearing Date: April 30, 2024
Hearing Time: 2:00 p.m.
Courtroom: 1, 4th Floor

**MOTION OF DIGITAL CONTENT
NEXT FOR LEAVE TO FILE BRIEF
AS *AMICUS CURIAE* IN SUPPORT
OF EPIC GAMES, INC.’S MOTION
TO ENFORCE INJUNCTION**

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Digital Content Next (“DCN”), through its
3 undersigned counsel, will move this Court, in Courtroom 1 of the Oakland Courthouse,
4 1301 Clay Street, Oakland, California 946112, on April 30, 2024, at 2:00 p.m. for leave to
5 file a brief as *Amicus Curiae* in this litigation. This Motion is supported by the
6 accompanying proposed order granting the Motion.

7 Through this Motion, DCN respectfully requests that the Court grant it
8 permission to file a brief as *Amicus Curiae* in support of Plaintiff Epic Games, Inc.’s
9 (“Epic”) Motion to Enforce Injunction. A copy of DCN’s proposed brief is attached hereto
10 as Exhibit A. The undersigned counsel has consulted counsel for the parties in this matter.
11 Plaintiff has consented to the filing of DCN’s brief and Defendant does not consent to the
12 filing of that brief.

13 **INTEREST OF DCN AS *AMICUS CURIAE***

14 Founded in 2001, DCN is the only trade organization dedicated to serving the
15 unique and diverse needs of high-quality digital content companies that enjoy trusted,
16 direct relationships with consumers and advertisers. DCN’s members¹ include many of the
17 most trusted and well-respected publishing brands in the United States. Together, DCN’s
18 members have an unduplicated audience of 259 million unique visitors and reach 95
19 percent of the U.S. online population.

20 DCN’s member list, the corporate logos of which are displayed on the next
21 page, is a veritable “who’s who” of the American media and publishing industry:
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27 ¹ See <https://digitalcontentnext.org/membership/members/> for a listing of current
28 DCN members.

DCN Member Organizations

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1 Consumers seek out DCN member brands because they value trustworthy
2 information that has gone through a rigorous editorial process, and publishers are held to
3 account for the quality and trustworthiness of their news and entertainment by audiences
4 who have high expectations. In light of Defendant Apple Inc.’s (“Apple”) dominant market
5 position in the United States, DCN’s member companies must work extensively with and
6 through Apple to promote and distribute their original content and apps, engage with
7 existing subscribers and audiences, and find new audiences.

8 DCN and its members are directly impacted by Apple’s App Store Review
9 Guidelines (the “Guidelines”) and have a substantial interest in ensuring that the Court’s
10 September 10, 2021 injunction against Apple is enforced. DCN’s members have been
11 subject to Apple’s anti-steering restrictions for years, and Apple’s anticompetitive behavior
12 injures not only DCN and its members, but also the entire American public, which relies
13 on DCN’s member organizations for news and entertainment. DCN therefore has a unique
14 perspective that can aid the Court in its resolution of Plaintiff’s Motion to Enforce
15 Injunction.

16 Apple’s late, legendary leader Steve Jobs was often said to have a “reality
17 distortion field” that kicked in whenever he committed his team to overcoming an obstacle.
18 Apple, through its so-called “Notice of Compliance”, Dkt. 871, is engaging in reality
19 distortion on the grandest possible scale. Apple has done everything in its power to thwart
20 and evade the injunction entered by this Court, and its “Notice of Compliance” brazenly
21 flouts Apple’s *non*compliance with this Court’s Orders. DCN submits this brief to urge
22 the Court to see through Apple’s “reality distortion field” and enforce its injunction.

23 ARGUMENT

24 The Court possesses broad discretion over the question of whether to grant
25 permission to file an *Amicus Curiae* brief, and “generally courts have exercised great
26 liberality” in permitting such briefs. *Woodfin Suite Hotels, LLC v. City of Emeryville*, 2007
27 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007) (internal quotation omitted). “There are no strict
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1 prerequisites that must be established prior to qualifying for amicus status; an individual
2 seeking to appear as amicus must merely make a showing that his participation is useful or
3 otherwise desirable to the court.” *California v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d
4 1153, 1164 (N.D. Cal. 2019). “District courts frequently welcome amicus briefs from non-
5 parties concerning legal issues that have potential ramifications beyond the parties directly
6 involved or if the amicus has unique information or perspective that can help the court
7 beyond the help that the lawyers for the parties are able to provide.” *Sonoma Falls*
8 *Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003)
9 (internal quotation omitted). DCN’s proposed brief fulfills that purpose.

10 The resolution of Plaintiff’s Motion to Enforce Injunction will directly affect
11 DCN and its members. As explained in DCN’s proposed brief, Apple has failed to comply
12 with this Court’s injunction that prohibited Apple from blocking developers such as DCN’s
13 members from steering users to alternative payment methods outside of Apple’s in-app
14 purchasing mechanism. Apple’s proposed scheme for permitting external purchase links
15 within an app imposes burdensome and unjustified restrictions on the flow of information
16 to users that will ultimately inhibit price competition. These new anti-steering restrictions
17 will have broad real-world impacts on all app developers and their users—not just gaming
18 apps—including publishers and members of the press, whose critical function in U.S.
19 society is enshrined in the First Amendment to the U.S. Constitution.

20 DCN’s members have been subject to Apple’s anti-steering restrictions for
21 years—often in direct competition with Apple’s own apps and services—and have
22 extensive experience with developing apps under Apple’s Guidelines. DCN can provide
23 the Court with a broader understanding of how Apple has used, and continues to use, the
24 Guidelines to restrict price competition and why the external link process it has now
25 proposed is a clear violation of the Court’s injunction. Moreover, DCN can provide useful
26 perspective to the Court concerning the effects of Apple’s restrictions on the publishing
27 industry and the free press. DCN’s perspective on the negative impact of Apple’s new
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1 anti-steering restrictions will be useful to the Court in determining whether Apple has
2 adequately complied with this Court's injunction, and DCN believes it will help in
3 resolving Plaintiff's Motion to Enforce Injunction.

4
5 **CONCLUSION**

6 For the foregoing reasons, DCN respectfully requests that the Court grant
7 DCN leave to file its proposed brief as *Amicus Curiae*.

8 Dated: March 22, 2024

Respectfully submitted,

9 HUTH REYNOLDS LLP

10 /s/ Karl Huth

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