

# **Exhibit A**



**TABLE OF CONTENTS**

	<i>Page</i>
<b>INTEREST OF <i>AMICI CURIAE</i></b> .....	1
<b>INTRODUCTION</b> .....	2
<b>ARGUMENT</b> .....	5
<b>I. THE APPLE PLAN KEEPS IN PLACE EXPRESS ANTI-STEERING RULES THAT THIS COURT FOUND ANTI-COMPETITIVE</b> .....	5
A. Apple Continues To Prohibit “Other Calls to Action” Informing Consumers about, or Directing Consumers to, Lower-Cost Payment Options.....	5
B. Apple Has Retained Its Prohibition on “Encourag[ing] Users To Use a Purchasing Method Other than In-App Purchase”.....	7
<b>II. APPLE CONTINUES EFFECTIVELY TO PROHIBIT ‘EXTERNAL LINKS’ DIRECTING CUSTOMERS TO LOWER-COST PAYMENT OPTIONS</b> .....	8
A. Apple’s External Link Rules Dictate Where and How Developers Communicate with Users about Alternate Payment Mechanisms, Rendering External Links Impractical for Developers and Irrelevant to Consumers.....	9
B. Apple Imposes a 27% Commission on External Purchases, Eliminating any Meaningful Price Competition with IAP .....	13
C. The Apple Plan Suppresses Competition from Third-Party Payment Alternatives with No Legitimate Justification .....	15
<b>III. APPLE’S RESTRICTIONS WILL CONTINUE TO HARM CONSUMERS AND APP DEVELOPERS</b> .....	16
<b>IV. THE APPLE PLAN SHOULD BE REJECTED FOR FAILING TO COMPLY WITH THE LETTER AND THE SPIRIT OF THE INJUNCTION</b> .....	20
<b>CONCLUSION</b> .....	21

**TABLE OF AUTHORITIES**

*Page(s)*

**Cases**

*B2B CFP Partners, LLC v. Kaufman*,  
2012 WL 1067904 (D. Ariz. Mar. 29, 2012) .....6

*Epic Games, Inc. v. Apple Inc.*,  
559 F. Supp. 3d 898 (N.D. Cal. 2021) ..... *passim*

*Federal Trade Comm’n v. Productive Marketing, Inc.*,  
136 F. Supp. 2d 1096 (C.D. Cal. 2001) .....20

*Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc’y*,  
774 F.3d 935 (9th Cir. 2014) .....20, 21

*John B. Stetson Co. v. Stephen L. Stetson Co.*,  
128 F.2d 981 (2d Cir. 1942).....20

*Zest Anchors, LLC v. Geryon Ventures, LLC*,  
2022 WL 16838806 (S.D. Cal. Nov. 9, 2022) .....20, 21

1 Meta Platforms, Inc. (“Meta”), Microsoft Corporation (“Microsoft”), X Corp.  
2 (“X”), and Match Group, LLC (“Match Group”) respectfully submit this brief as *Amici Curiae* in  
3 support of Plaintiff Epic Games, Inc.’s (“Epic”) Motion to Enforce Injunction.<sup>1</sup>

#### 4 **INTEREST OF *AMICI CURIAE***

5 Meta is a technology company, founded in 2004, whose mission is to give people  
6 the power to build communities and bring the world closer together. Meta develops and operates  
7 some of the world’s most popular apps, including Facebook, Instagram, WhatsApp, and  
8 Messenger, which are used daily by people worldwide to connect, find communities, and grow  
9 businesses. Meta’s products and services enable people to connect and share with friends, family,  
10 co-workers, and customers through mobile devices, personal computers, virtual reality headsets,  
11 and wearables.

12 Microsoft is a technology industry leader, founded in 1975, that offers a wide range  
13 of services, software, and hardware products. Microsoft’s mission is to enable individuals and  
14 businesses throughout the world to realize their full potential by creating technology that  
15 transforms the ways people work, play, and communicate. Microsoft develops, manufactures,  
16 licenses, sells, and supports a wide range of programs, devices, and services, including Windows,  
17 Microsoft Office, Surface, Xbox and Xbox Game Pass, and Bing. Microsoft offers many of its  
18 products as mobile apps, including on iOS, such as Microsoft Office, Teams, the Xbox app, and  
19 games including Candy Crush and Minecraft.

20 X (formerly “Twitter”) is an international technology company that operates an  
21 online discussion platform used by more than 500 million active users around the world. X is a  
22

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23 <sup>1</sup> Meta is a publicly traded company that does not have a parent corporation. No publicly  
24 traded corporation owns 10% or more of the common stock of Meta. Microsoft is a publicly traded  
25 company with no parent corporation. No publicly traded corporation owns 10% or more of the  
26 common stock of Microsoft. X is a privately held company, and its parent is X Holdings Corp.  
27 No publicly traded corporation owns 10% or more of X Holdings Corp.’s stock. Match Group,  
28 LLC, is a limited liability company. The sole member of Match Group, LLC is Match Group  
Holdings II, LLC, which itself has a sole member, Match Group Holdings I, LLC. The sole  
member of Match Group Holdings I, LLC is Match Group, Inc, a publicly traded company. Match  
Group, LLC is not currently aware of any publicly held entity that owns 10% or more of Match  
Group, Inc.’s stock. *Amici* affirm that no counsel for a party authored this brief in whole or in part,  
and no person other than *Amici* contributed any money to fund its preparation or submission.

1 real-time, open, public conversation platform that allows people to create, distribute, and discover  
2 content. X allows users to create and share ideas and information instantly through various product  
3 features, including public posts and videos.

4 Match Group owns and operates online dating brands, including Tinder, which is  
5 Match Group’s most popular dating brand. The Tinder service is available to users at no charge,  
6 including on iOS mobile device applications and on the web. Tinder users have the option of  
7 purchasing various subscription tiers as well as certain features on an á la carte basis.

8 *Amici* are each directly impacted by Apple’s App Store Review Guidelines  
9 (“Guidelines”) and have a substantial interest in ensuring that the Court’s September 10, 2021  
10 injunction against Apple is enforced. As developers of some of the most popular apps on the App  
11 Store, *Amici* have been subject to Apple’s anti-steering restrictions for years. *Amici* therefore have  
12 a unique perspective that can aid the Court in its resolution of Plaintiff’s Motion to Enforce  
13 Injunction.

## 14 INTRODUCTION

15 In September 2021, following a three-week bench trial, this Court issued an order  
16 (the “Trial Order”) finding that certain anti-steering provisions in Apple’s Guidelines had  
17 “numerous anticompetitive effects” and caused “considerable” harm to users of Apple’s iOS  
18 mobile devices and to developers of apps designed to run on those devices. *Epic Games, Inc. v.*  
19 *Apple Inc.*, 559 F. Supp. 3d 898, 1056 (N.D. Cal. 2021). At the time of trial, Apple’s anti-steering  
20 provisions were in Sections 3.1.1 and 3.1.3 of the Guidelines and prohibited developers from  
21 (i) including “buttons, external links, or other calls to action” within their apps that directed  
22 customers to purchasing mechanisms, other than Apple’s proprietary In-App Purchase  
23 programming interface (“IAP”), that could be used to purchase content to consume within their  
24 iOS apps or (ii) “encourag[ing] users to use a purchasing method other than [IAP]” either “within  
25 the app or through communications sent to points of contact obtained from account registrations  
26 within the app (like email or text).” (PX-2790, Dkt. No. 871-4, Ex. 11 §§ 3.1.1, 3.1.3.) These  
27 restrictions were designed to ensure that iOS users’ purchases of in-app content took place through  
28 Apple’s IAP, subject to Apple’s commissions of up to 30% — rates that the Court found to be

1 “excessive” and “unjustified.” *Epic Games*, 559 F. Supp. 3d at 997, 1054. The Court observed  
2 that Sections 3.1.1 and 3.1.3 of Apple’s Guidelines prevented app developers from informing  
3 consumers that iOS app content could be purchased at lower prices on non-Apple platforms, which  
4 — the Court recognized — had led to decreased innovation and higher costs to developers of iOS  
5 apps. *Id.* at 1054. As a result, the Court held that Apple’s anti-steering rules violated California’s  
6 Unfair Competition Law (“UCL”).

7 To remedy Apple’s UCL violation, the Court entered a permanent injunction  
8 expressly prohibiting Apple from restricting developers’ freedom to inform customers about, and  
9 direct customers to, alternatives to Apple’s IAP. Specifically, the injunction permanently enjoins  
10 Apple “from prohibiting developers from . . . including in their apps and their metadata buttons,  
11 external links, or other calls to action that direct customers to purchasing mechanisms, in addition  
12 to In-App Purchasing.”<sup>2</sup> (*See* Dkt. No. 813.) This remedy was appropriate, the Court held, because  
13 Apple’s anti-steering provisions “can be severed without any impact on the integrity of [Apple’s]  
14 ecosystem”; that is, Apple’s interests in protecting iOS users’ safety and privacy while using iOS  
15 apps “[would] not be significantly impacted by the increase of information to and choice for  
16 consumers.” *Epic Games*, 559 F. Supp. 3d at 1055, 1057. This Court’s Trial Order, and the Ninth  
17 Circuit’s opinion affirming the Court’s judgment, explained that the injunction was intended to  
18 achieve at least three aims: (i) offer consumers transparency and choice, by lifting the “veil” that  
19 Apple has imposed on in-app communications; (ii) facilitate price competition that Apple’s anti-  
20 steering rules have prevented; and (iii) enable third-party payment providers that compete with  
21 Apple’s IAP to serve as alternatives for app developers and consumers.

22 But Apple’s response to the injunction clearly violates the Court’s orders. On  
23 January 16, 2024 — the same day that the U.S. Supreme Court declined to hear Apple’s appeal of  
24 the Ninth Circuit’s decision upholding this Court’s injunction — Apple filed a Notice that  
25

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26 <sup>2</sup> The injunction also enjoins Apple from prohibiting developers from “communicating with  
27 customers through points of contact obtained voluntarily from customers through account  
28 registration within the app.” In 2021, in connection with its settlement of the *Cameron v. Apple*  
class action lawsuit, Apple eliminated Guidelines provisions that previously prohibited such  
communications. (*See* Apple’s Notice, Dkt. No. 871, at 15.)

1 explained Apple’s approach to complying with this Court’s orders (the “Apple Plan”). (*See*  
2 Apple’s Notice, Dkt. No. 871.) The Notice announces that Apple has created a new process, called  
3 the StoreKit External Purchase Link Entitlement (US), through which developers can apply for  
4 permission to include within their apps a link to an out-of-app purchase mechanism. (*Id.* at 5.)  
5 Over the next nine pages and 2,900 words, Apple’s Notice describes dozens of requirements and  
6 limitations to which developers must adhere to be eligible to include an external purchase link  
7 within their apps. (*Id.* at 6–15.)

8           The Apple Plan comports with neither the letter nor the spirit of this Court’s  
9 mandate in its Trial Order and injunction. As described in Epic’s Motion to Enforce (Dkt. No.  
10 897), the Apple Plan leaves in place anti-steering rules that this Court expressly found to be anti-  
11 competitive and imposes new restrictions on app developers that ensure the price competition that  
12 the injunction was designed to promote will never materialize. The Court should reject the Apple  
13 Plan for at least three reasons.

14           *First*, the Apple Plan violates the express terms of the injunction. Currently, the  
15 only way Apple permits developers to communicate with consumers within an iOS app to direct  
16 them to an alternative purchase method is by applying for an entitlement to include a link directly  
17 to the developer’s website. This interpretation of the Court’s injunction ignores the prohibition  
18 against Apple’s preventing developers from using, within their apps, “other calls to action” to  
19 direct users to purchasing methods other than IAP. Furthermore, Apple’s Guidelines retain the  
20 explicit anti-steering rules — prohibiting developers from “encourag[ing] users to use a purchasing  
21 method other than in-app purchase” — that the Court previously condemned.

22           *Second*, the Apple Plan also contravenes the injunction’s fundamental purposes. It  
23 imposes restrictions and conditions on developers’ ability to link to an external payment  
24 mechanism that dictate every aspect of developers’ communications with their users, stifling  
25 transparency and price competition, and denying meaningful consumer choice. Further, by  
26 requiring developers to pay an inflated commission on out-of-app purchases made after a user  
27 clicks on an external payment link, Apple ensures that developers cannot offer consumers a viable  
28 alternative to IAP, much less a competitive alternative that could reduce prices for consumers.



1 And finally, by providing that any external links that a developer includes in its apps must direct  
 2 users to a webpage owned by that developer — rather than to a third-party payment platform,  
 3 which could spread operational costs across and process payments for multiple developers —  
 4 Apple insulates itself from competition by existing rivals and prevents the emergence of new app  
 5 transaction platforms. Collectively, Apple’s requirements discourage consumers from using  
 6 alternatives to IAP, inflate the prices consumers would pay through alternative mechanisms, and  
 7 allow Apple to maintain the high IAP commissions that the Court found to be excessive.

8 *Third*, Apple’s restrictions will have real-world adverse impacts on both consumers  
 9 and app developers that extend beyond the Epic Games Store, and beyond mobile gaming  
 10 generally. Because the Court’s injunction applies to all apps, and not just gaming apps, *Amici* and  
 11 other developers should be permitted to direct their users to lower-cost purchasing mechanisms on  
 12 non-IAP channels, which would facilitate price competition and would serve as a check on Apple’s  
 13 IAP commissions. If allowed to stand, the Apple Plan’s new anti-steering restrictions will lead to  
 14 inflated prices across a broad swath of the digital economy and harm consumers and small  
 15 businesses throughout the United States.

16 Because the Apple Plan fails to meet the express requirements of the injunction and  
 17 does not further its goals, it should be rejected. Apple’s new restrictions are plainly designed to  
 18 render alternatives to Apple’s IAP impractical for developers, and inaccessible and unappealing to  
 19 consumers, thus circumventing both the spirit and underlying goals of the injunction. Accordingly,  
 20 *Amici* respectfully request that this Court grant Plaintiff’s Motion to Enforce, reject the Apple Plan,  
 21 and require Apple to fully comply with the terms of the Injunction.

## 22 ARGUMENT

### 23 I. THE APPLE PLAN KEEPS IN PLACE EXPRESS ANTI-STEERING RULES 24 THAT THIS COURT FOUND ANTI-COMPETITIVE.

#### 25 A. Apple Continues To Prohibit “Other Calls to Action” Informing Consumers 26 about, or Directing Consumers to, Lower-Cost Payment Options.

27 The injunction instructs Apple that it may not prohibit developers from “including  
 28 in their apps and their metadata *buttons*, external links, *or other calls to action* that direct customers  
 to purchasing mechanisms, in addition to In-App Purchasing.” (Dkt No. 813 (emphases added).)

1 The injunction thus plainly requires Apple to permit developers to take at least two kinds of  
2 actions, within their apps, to direct or encourage consumers to use alternatives to Apple’s IAP:  
3 (i) including buttons or external links that “direct customers to purchasing mechanisms” other than  
4 IAP; and (ii) including information that apprises customers of alternative purchasing mechanisms,  
5 without offering a direct link to such mechanisms (*i.e.*, “other calls to action”). By requiring Apple  
6 to permit both types of actions, the Court sought to remove Apple’s restrictions on providing  
7 truthful pricing information to consumers and to ensure the “open flow of information” about  
8 lower prices available on other platforms. *Epic Games*, 559 F. Supp. 3d at 1055.

9 But under the Apple Plan, the *only* way for developers to direct customers to  
10 alternative payment options is the tightly circumscribed external link entitlement.<sup>3</sup> Apple’s  
11 interpretation of the injunction thus renders meaningless the Court’s prohibition against restricting  
12 “other calls to action that direct customers to purchasing mechanisms.” The provision of even the  
13 most basic information about alternatives remains forbidden under the Apple Plan. For example,  
14 a developer might wish to offer the following information within its app: “*You can buy this*  
15 *product at a 30% discount on our website*” or “*Buy this service on the web to avoid a 30% Apple*  
16 *service charge on your total payment amount.*” These simple calls to action would allow a  
17 developer to inform consumers about alternative payment options and are the kinds of statements  
18 that the Court clearly intended that Apple would allow. By continuing to prohibit statements like  
19 these, the Apple Plan violates the maxim that injunctions must be construed “so as to give effect  
20 to every part of the document.” *B2B CFP Partners, LLC v. Kaufman*, 2012 WL 1067904, at \*3  
21 (D. Ariz. Mar. 29, 2012).

22 Preventing app developers from communicating truthful information about the  
23 prices available on other platforms also undermines the Court’s desire to terminate restrictions that  
24 unlawfully suppress information about alternative payment methods and, in turn, competition to  
25 Apple’s IAP. *Epic Games*, 559 F. Supp. 3d at 1054 (citing a lack of competition among different  
26 payment mechanisms and observing that “competition is not driving [Apple’s] commission rate”).

27 <sup>3</sup> The numerous problems with Apple’s external link entitlement are described in Section II  
28 below.

1 And there is no conceivable justification for Apple’s prohibition of such statements (certainly,  
 2 Apple offers none). In the examples noted above, the developer is merely conveying information  
 3 to the consumer in a way that furthers price competition, without modifying the payment flow or  
 4 any other aspect of the app experience. Yet Apple continues to prohibit such statements, in  
 5 violation of this Court’s injunction.

6 **B. Apple Has Retained Its Prohibition on “Encourag[ing] Users To Use a  
 7 Purchasing Method Other than In-App Purchase.”**

8 In its Trial Order, this Court concluded that “Apple’s conduct in enforcing anti-  
 9 steering restrictions is anticompetitive,” and that a “remedy to eliminate those provisions is  
 10 appropriate.” *Epic Games*, 559 F. Supp. 3d at 1068. The Trial Order makes clear that the  
 11 offending anti-steering provisions in Apple’s Guidelines included *both* Section 3.1.1, which at the  
 12 time of trial provided that apps “may not include buttons, external links, or other calls to action  
 13 that direct customers to purchasing mechanisms other than in-app purchase,” *and* Section 3.1.3,  
 14 which provided that apps “cannot . . . within the app . . . encourage users to use a purchasing  
 15 method other than in-app purchase.”<sup>4</sup>

16 In response to the injunction, Apple removed the offending language from Section  
 17 3.1.1, but inexplicably maintained it in Section 3.1.3. That section — which applies to  
 18 “Multiplatform Services” (like Facebook and Instagram) that “operate across multiple platforms,”<sup>5</sup>  
 19 and several other broad categories of apps<sup>6</sup> — still states that a developer “cannot, within the app,  
 20 encourage users to use a purchasing method other than in-app purchase.” (*See* Dkt. No. 874, Ex.

21 \_\_\_\_\_  
 22 <sup>4</sup> *Id.* at 1055 & n.635 (“As explained before, Apple uses anti-steering provisions prohibiting  
 23 apps from including ‘buttons, external links, or other calls to action that direct customers to  
 24 purchasing mechanisms other than in-app purchase,’ [Section 3.1.1] and from ‘encourag[ing] users  
 25 to use a purchasing method other than in-app purchase’ [Section 3.1.3] . . . . Thus, developers  
 26 cannot communicate lower prices on other platforms . . . .”); *see also id.* at 944–45 (referencing  
 27 both sections).

28 <sup>5</sup> The definition would also appear to capture many gaming apps that are available on gaming  
 consoles and/or other platforms and a broad range of other types of apps that can be accessed on  
 the web, including news apps and audio- and video-streaming apps.

<sup>6</sup> Indeed, the apps subject to Section 3.1.3’s anti-steering restriction include all apps that,  
 outside the narrow confines of Apple’s new external link entitlement, are permitted to use purchase  
 methods other than Apple IAP. (*See* Dkt. No. 874, Ex. 1 § 3.1.3.)

1 § 3.1.3.) Apple’s Guidelines thus preserve the very anti-steering restrictions that this Court found  
2 to be anti-competitive and that its injunction was intended to curtail.

3 **II. APPLE CONTINUES EFFECTIVELY TO PROHIBIT ‘EXTERNAL LINKS’**  
4 **DIRECTING CUSTOMERS TO LOWER-COST PAYMENT OPTIONS.**

5 In the Trial Order, this Court envisioned that the appropriate remedy for Apple’s  
6 anti-steering provisions would be to “sever[.]” or “invalidat[e] the offending provisions.” *Epic*  
7 *Games*, 559 F. Supp. 3d at 1055, 1057. Instead of striking the anti-steering rules from its  
8 Guidelines, as the Court contemplated, Apple has put in place a new, but also anti-competitive,  
9 scheme that continues to restrict price information. The practical effect of Apple’s new restrictions  
10 — with which developers must comply if they wish to include links to external payment  
11 mechanisms within their apps — is to prevent app developers from presenting alternatives to  
12 Apple’s IAP when consumers are making their decision whether to purchase in-app content.  
13 Apple’s new rules thus replicate the prohibition against directing consumers to alternative payment  
14 mechanisms, even if that prohibition is no longer made explicit in the Guidelines.

15 Apple claims that compliance with Paragraph 1(i) of the injunction is fully achieved  
16 with the introduction of the external link entitlement in Section 3.1.1(a) of its Guidelines, called  
17 “Link to Other Purchase Methods.”<sup>7</sup> (See Apple’s Notice, Dkt. No. 871, at 4.) This change is the  
18 sole accommodation Apple has made, independently of Apple’s obligations under its settlement  
19 of the *Cameron v. Apple* class action lawsuit, purportedly to address this Court’s Injunction. (See  
20 *id.* at 15.) But in reality, these links do nothing to give consumers true choice in selecting between  
21 alternative payment options for in-app content.

22 There are at least three obvious problems with the Apple Plan as a means of  
23 addressing the Court’s goal to “increase competition, increase transparency, [and] increase

24 \_\_\_\_\_  
25 <sup>7</sup> Section 3.1.1(a) now reads: “Developers may apply for an entitlement to provide a link in  
26 their app to a website the developer owns or maintains responsibility for in order to purchase such  
27 items. . . . In accordance with the entitlement agreement, the link may inform users about where  
28 and how to purchase those in-app purchase items, and the fact that such items may be available for  
a comparatively lower price. The entitlement is limited to use only in the iOS or iPadOS App  
Store on the United States storefront. In all other storefronts, apps and their metadata may not  
include buttons, external links, or other calls to action that direct customers to purchasing  
mechanisms other than in-app purchase.”

1 consumer choice and information.” *See Epic Games*, 559 F. Supp. 3d at 1069. *First*, the external  
2 link entitlement process is layered with so many requirements, and dictates how developers may  
3 communicate pricing information to such a degree, that it neuters developers’ ability to present  
4 alternative payment options to users. *Second*, purchases that take place on the developer’s website  
5 within seven days after the consumer clicks on the external link remain subject to a 27% (or 12%,  
6 for qualifying purchases) commission. This alone functionally renders external links ineffective  
7 as a means of directing customers to alternative payment options, and directly undermines the  
8 Court’s goal of creating price competition. *Third*, the Apple Plan unnecessarily requires that the  
9 external link send users to the app developer’s website to complete a transaction, preventing  
10 developers from employing any alternative payment option outside of the developer’s own  
11 website.

12 Each of these shortcomings alone would make it difficult for developers to  
13 implement external links in such a way that consumers might actually use an alternative payment  
14 mechanism to IAP. Together, these restrictions restrict price competition and prevent the free flow  
15 of information so as to *ensure* that consumers will choose IAP over alternative payment options  
16 every time.

17 **A. Apple’s External Link Rules Dictate Where and How Developers**  
18 **Communicate with Users about Alternative Payment Mechanisms,**  
19 **Rendering External Links Impractical for Developers and Irrelevant to**  
20 **Consumers.**

21 The rules for Apple’s external link entitlement contain dozens of onerous  
22 requirements, set out in an eight-page addendum to the Apple Developer Program License  
23 Agreement (*see* Dkt. No. 874, Ex. 2), dictating every aspect of how developers may present the  
24 external link within their apps. (*See also* Epic Brief, Dkt. No. 897, at 5–11 (describing anti-  
25 competitive restrictions in Apple Plan).) These elements require consumers to navigate a veritable  
26 obstacle course before completing a transaction using an alternative payment mechanism. Many  
27 of these restrictions, even standing in isolation, would make it challenging for developers  
28 effectively to inform consumers about payment alternatives to Apple’s IAP. When combined, the  
requirements for the external link entitlement ensure that very few users will ever even *find* the

1 external link within an app in the first place — and those users who do find the link will not enjoy  
2 greater consumer choice because the link is not allowed to be part of any in-app purchase flow.

3 ***Location and Appearance of the Link.*** Apple makes every effort to hide the  
4 payment links by prohibiting app developers from placing them in convenient locations where  
5 consumers would expect to find payment-related options or from using tools to help consumers  
6 locate them. Apple requires that the link appear “on no more than one app page . . . in a single,  
7 dedicated location” and forbids developers from displaying the link “on any page that is part of an  
8 in-app flow to merchandise or initiate a purchase using in-app purchase.” (Dkt. No. 874, Ex. 2  
9 § 3.3.) This restriction prevents the link from appearing where consumers would find it most  
10 convenient (*i.e.*, in an in-app payment flow) and impairs consumers’ ability to engage in  
11 comparison shopping. Because Apple forbids links from appearing on any page that is part of an  
12 in-app payment flow, consumers cannot make point-of-sale comparisons between Apple IAP and  
13 alternatives. Instead, the scheme relegates the link to unexpected and inconvenient locations, such  
14 as an app’s sign-in or account screens.<sup>8</sup> In effect, users are forced to choose *in advance* whether  
15 to use IAP or an external payment method, without having the ability to compare payment options  
16 and pricing *at the time of purchase*.

17 Making matters worse, developers may not help users find the in-app purchase link;  
18 the link must be found at an “app page the user navigates to,” and Apple’s requirements forbid  
19 developers from displaying the link in an “interstitial, modal, or pop-up,” or in a button of a color  
20 that contrasts with the app page background. (*Id.*; *id.*, Ex. 3 (requiring that links “may not be  
21 enclosed in a shape that uses a contrasting background fill” and that “[t]he background surrounding  
22 the text must match the background of your app’s page.”).) Apple also requires the link “[n]ot  
23 mimic Apple’s in-app purchase system” (Dkt. No. 874, Ex. 2 § 3.3), but the meaning of this  
24 requirement is unclear; the streamlined checkout flow that IAP offers is by no means unique to  
25 IAP or proprietary to Apple. These requirements regarding the *appearance* of the external  
26 payment link cannot have any reasonable justification, except to make it more difficult for users

27 <sup>8</sup> See Dkt. No. 874, Ex. 3 (providing exemplar templates for an external link appearing  
28 within an app’s sign-in screen and account screen).

1 to identify the link and thus protect Apple’s ability to funnel consumers towards IAP.

2           **Language Requirements.** Apple also prescribes the precise language that  
3 developers must use in presenting the link, limiting developers to one of seven “templates” that  
4 dictate the exact wording surrounding the link. For example, developers are limited to stating,  
5 “For special offers, go to www.example.com,” or “Buy for \$X.XX at www.example.com.” (*Id.*  
6 Ex. 3.) Developers may not provide any additional detail about special offers that might be  
7 available or give consumers helpful information about the different products or services for sale.  
8 Apple also forbids developers from “encourag[ing]” consumers to use an alternative payment  
9 method (as discussed *supra*, Section I.B), and from “discourag[ing]” consumers’ use of Apple IAP  
10 (*see* Dkt. No. 874, Ex. 2 §§ 3.1, 3.3). Apple thus forbids developers from offering complete  
11 information about the products or services they offer on their websites and the prices at which such  
12 products or services are available.

13           By dictating the language developers must (and must not) use to inform users about  
14 alternative mechanisms, Apple perpetuates the very problem that the Court identified and sought  
15 to stop. The Court found that Apple used its anti-steering rules “to hide information on [its]  
16 commission rates from the consumers,” and it identified Apple’s “general policy” of “prevent[ing]  
17 developers from informing users of its 30% commission” as among the restrictions on price  
18 information that should be “severed” from Apple’s Guidelines. *Epic Games*, 559 F. Supp. 3d at  
19 959, 1055. The Apple Plan prevents developers from informing consumers about “policies which  
20 effect consumers’ ability to find cheaper prices,” allowing Apple to continue to exploit consumers  
21 to extract supracompetitive IAP profits. *Id.* at 1013.

22           **Consumer Warning Sheet.** Apple further requires that consumers who succeed in  
23 finding the purchase link and clicking on it must then confront and click past an alarming “in-app  
24 system disclosure sheet” pop-up. (*See* Dkt. No. 874, Ex. 3.) The warning screen leads with the  
25 boldface alert: “You’re about to go to an external website. Apple is not responsible for the privacy  
26 or security of purchases made on the web.” (*Id.*) The warning frames Apple’s payment method  
27 as the norm and alternative payment methods as dangerous deviations. The pop-up further warns  
28 that App Store-related features, “such as subscription management and refund requests, will not

1 be available,” conveying the misimpression that the developer does not offer subscription  
2 management and refund features of its own when, in fact, Apple *requires* developers to implement  
3 a process for subscription management and refund requests to qualify for a link entitlement. (*See*  
4 Dkt. No. 874, Ex. 2 § 4.3.) And although the pop-up recites the benefits that consumers will *lose*  
5 by using an alternative to Apple’s IAP, it affords developers no space to describe any benefits  
6 consumers will *gain* by doing so.

7           ***Technical Restrictions.*** Apple also requires that, if a consumer clicks on the  
8 purchase link and proceeds past the warning pop-up, he or she must be directed to the developer’s  
9 website, which must open in a new window rather than within an in-app web view. (Dkt. No. 874,  
10 Ex. 2 § 3.3.) Because Apple also prohibits developers from including URL parameters in the  
11 purchase link (*id.*), the developer’s website will have no information about who the consumer is  
12 or the item he or she wished to purchase. Rather than tapping one button leading to a screen where  
13 the consumer can complete a purchase — which is technically feasible — the consumer must  
14 instead find the static app page where the purchase link is located, tap the link, continue past  
15 Apple’s warning sheet, enter his or her login information, search again for the particular item he  
16 or she wished to purchase, and complete the purchase on the developer’s website.

17           Furthermore, it is not practical for *Amici* and other developers to direct app users  
18 who click an external payment link to a single checkout page listing all of the products or services  
19 available within the developer’s app. Apple’s technical restrictions are especially problematic for  
20 developers of ad-supported apps like Meta’s and X’s that offer a disparate range of products, some  
21 of which are intended for consumers and others for advertisers. As such, *Amici* would be forced  
22 to direct users to the home page for the browser version of their apps and hope that their users can  
23 find their way to the products or services they intended to purchase. By restricting the information  
24 that can be passed from a developer’s app to its website, Apple needlessly places roadblocks that  
25 prevent consumers from seamlessly completing their purchases, thereby making the use of  
26 alternatives to Apple’s IAP still more undesirable.

27           All of these restrictions create unnecessary friction in purchasing through external  
28 links, which Apple plainly engineered to discourage consumers from even attempting to use



1 alternatives outside Apple’s IAP. These restrictions violate the injunction and continue to prop up  
 2 Apple’s “excessive” IAP commission rates. *Epic Games*, 559 F. Supp. 3d at 1054. As this Court  
 3 recognized, “competition is not driving [Apple’s] commission rate” of up to 30%, and Apple’s  
 4 restrictions “create the potential for anticompetitive exploitation of consumers.” *Id.* at 1054–55.  
 5 By attaching so many conditions and requirements to the external link entitlement, Apple has  
 6 ensured that developers will not be able to use external links to direct customers effectively to  
 7 alternative payment options, so that Apple will be able to continue to direct users towards IAP and  
 8 its commission rates that this Court found to be “supracompetitive” and unjustified.<sup>9</sup>

9 **B. Apple Imposes a 27% Commission on External Purchases, Eliminating any**  
 10 **Meaningful Price Competition with IAP.**

11 As if its design and technical requirements for the external purchase links were not  
 12 enough, Apple also continues to impose commission rates similar to those it charges for IAP on  
 13 purchases taking place through alternative mechanisms. Under Apple’s new rules, developers  
 14 must still pay Apple a 27% *commission* (or 12% for certain qualifying purchases), instead of the  
 15 usual 30% (or 15%) commission charged on transactions made through Apple’s IAP. (Dkt. No.  
 16 874, Ex. 2 § 5.1.) Remarkably, that commission applies to any sales of “goods or services [that]  
 17 can be used in an Application” — regardless of whether the consumer *actually does* use them  
 18 within an iOS app — that take place on the developer’s website and are made within seven days  
 19 after a link out. (*Id.* § 1 (defining “Transaction”).) Within that seven-day window, the consumer  
 20 might make multiple purchases of content that can be consumed within the developer’s iOS app,  
 21 including purchases made on desktop computers or even on Android devices. Apple claims  
 22 entitlement to collect its external purchase commission on each of those purchases, even if the  
 23 consumer never ultimately decides to access the content within an iOS app. In other words, Apple  
 24 has used the injunction *to expand* the scope of transactions that are subject to its commissions.

25 <sup>9</sup> *See, e.g., Epic Games*, 559 F. Supp. 3d at 1056–57 (“This trial has exposed numerous  
 26 anticompetitive effects which need not be recounted in detail. . . . Apple has not offered any  
 27 justification for the actions other than to argue entitlement. Where its actions harm competition  
 28 and result in supracompetitive pricing and profits, Apple is wrong. Accordingly, the harm from  
 the anti-steering provisions outweighs its benefits, and the provision violates the UCL under the  
 balancing test.”).

1 This has several important implications.

2           *First*, it will not be economically viable for developers to implement lower-cost,  
3 alternative payment options if they must pay a 27% commission to Apple. This is because  
4 developers incur additional costs for transactions outside of their apps that would exceed the 3%  
5 “discount” to Apple’s normal IAP commission in almost every case. For example, payment  
6 processing fees alone often exceed 3% of the amount of the transaction.<sup>10</sup> Beyond payment  
7 processing, developers may also incur additional expenses, such as the cost of providing customer  
8 service to troubleshoot payment issues. As such, after including Apple’s 27% commission,  
9 developers’ costs of implementing a payment alternative would almost always be greater than  
10 30%. Apple’s imposition of a commission that is effectively equivalent to or higher than Apple’s  
11 own IAP commission means that a developer cannot afford to offer alternative payment solutions  
12 more cheaply than those available within iOS apps using Apple’s IAP.

13           *Second*, even those few developers who otherwise would be willing to pay Apple’s  
14 27% to implement their own payment mechanism will very likely be dissuaded from doing so  
15 because few, if any, consumers would ever choose an alternative payment option priced the same  
16 as or higher than the price through IAP. Apple’s IAP enjoys many inherent advantages: for one  
17 thing, IAP is not subject to the restrictions that Apple places on external links. As this Court  
18 recognized, IAP also offers other benefits to consumers, including the fact that their payment  
19 method(s) may already be saved with Apple (an advantage that can be attributed to Apple’s years-  
20 long prohibition on alternatives to IAP and its anti-steering provisions).<sup>11</sup> To overcome those  
21 advantages, alternative payment mechanisms would likely need to offer a significantly lower price  
22 to encourage consumers to overcome the barriers to forgoing IAP and complete transactions on a

23 <sup>10</sup> See, e.g., *PayPal Merchant Fees*, PAYPAL, <https://www.paypal.com/us/webapps/mpp/merchant-fees> (last updated Oct. 23, 2023) (commercial transaction fee for payments in U.S. dollars of 2.99% plus \$0.49 for credit and debit card payments, or 3.49% plus \$0.49 for other commercial transactions); *Pricing*, STRIPE, <https://stripe.com/pricing?> (2.9% plus \$0.30 fee for transactions through domestic cards and digital wallets, plus additional 0.5% fee for manually entered cards and other potential fees).

27 <sup>11</sup> See *Epic Games*, 559 F. Supp. 3d at 1055 (noting that “information costs” imposed by Apple’s anti-steering rules “may create ‘lock-in’ for platforms as users lack information about the lifetime costs of an ecosystem”).

1 developer’s website. Apple’s imposition of a tax equivalent to or higher than Apple’s own IAP  
2 commission all but guarantees that a developer cannot offer prices low enough to entice consumers  
3 to switch away from Apple’s IAP, and therefore makes it significantly less likely that a developer  
4 will offer an alternative at all.

5 *Third*, for these two reasons, Apple’s limited allowance of external links cannot  
6 possibly foster the price competition that this Court intended to facilitate through its injunction.  
7 The Court made clear that the purpose of the injunction is to provide consumers with information  
8 to enable price competition between Apple and alternative payment options.<sup>12</sup> That purpose is  
9 clearly undermined if Apple can artificially distort competition by imposing a large tax on any  
10 alternative payment option. By taxing the very act that is intended to enable competition (while  
11 offering a “discount” that is just small enough to ensure that any alternative payment mechanism  
12 nearly always costs as much as, or more than, IAP), Apple purposefully and directly undermines  
13 the price competition the Court intended to enable and raises prices for its rivals above what would  
14 be charged in a competitive market. And by ensuring that payment alternatives are priced at or  
15 above the artificially high prices available on IAP, Apple can continue to keep consumers in the  
16 dark about how Apple’s rules inflate pricing and maintain its own “unjustified” prices. *Epic*  
17 *Games*, 559 F. Supp. 3d at 997.

18 **C. The Apple Plan Suppresses Competition from Third-Party Payment**  
19 **Alternatives with No Legitimate Justification.**

20 Finally, Apple unnecessarily requires that app developers direct consumers to the  
21 developer’s own website to complete a purchase transaction. This distorts competition by  
22 insulating Apple from third-party competitors to IAP. For example, many consumers may value  
23 the option of being redirected to a centralized payment site where they could manage all of their

24 \_\_\_\_\_  
25 <sup>12</sup> *See, e.g., Epic Games*, 559 F. Supp. 3d at 1014 (“While some consumers may want the  
26 benefits Apple offers (*e.g.*, one-stop shopping, centralization of and easy access to all purchases,  
27 increased security due to centralized billing), Apple actively denies them the choice. . . . Apple  
28 created an innovative platform but it did not disclose its rules to the average consumer. Apple has  
used this lack of knowledge to exploit its position. Thus, loosening the restrictions will increase  
competition as it will force Apple to compete on the benefits of its centralized model or it will  
have to change its monetization model in a way that is actually tied to the value of its intellectual  
property.”).

1 app purchases — such as that offered by Stripe, PayPal, and other providers of third-party payment  
2 solutions — rather than having to visit each developer’s site individually and enter their payment  
3 details multiple times.

4           There is no reason for this requirement aside from Apple’s desire to protect itself  
5 from existing competitors and to prevent the emergence of new alternatives. The restriction cannot  
6 reasonably be explained by any of the purported privacy or security justifications that Apple  
7 asserts. (*See* Apple’s Notice, Dkt. 871, at 6; *see also* Epic Brief, Dkt. No. 897, at 19–20.) In the  
8 Trial Order, this Court was skeptical that Apple’s ability to protect users against fraud is superior  
9 to other payment providers. *See Epic Games*, 559 F. Supp. 3d at 1012 (finding that other  
10 companies could better detect fraudulent transactions, that Apple “has not shown” that its  
11 verification process for delivery of digital goods “is any different than other payment processors,”  
12 and that “any potential for fraud prevention is not put into practice”). And in any event, the Court  
13 already balanced Apple’s purported privacy and security justifications against the harms caused  
14 by its anti-steering rules and concluded that “the harm from the anti-steering provisions outweighs  
15 its benefits.” *Id.* at 1056–57. Apple cannot now legitimately stand on privacy and security as the  
16 reason for continuing to deny consumers the ability to choose third-party payment providers over  
17 Apple’s own IAP.

### 18 **III. APPLE’S RESTRICTIONS WILL CONTINUE TO HARM CONSUMERS AND** 19 **APP DEVELOPERS.**

20           The impact of Apple’s refusal to comply with the Court’s injunction reaches far  
21 beyond the Epic Games Store. The injunction’s clear directive applies not only to gaming apps,  
22 but also to all other apps that offer digital products, features, and services to their users, including  
23 the apps offered by *Amici*. Like many other app developers, *Amici* permit users to access their  
24 services through both users’ mobile devices and other means, such as personal computers. As  
25 such, *Amici* already offer many ways for users to purchase content to be used within their apps,  
26 many of which are much cheaper than Apple’s IAP. But Apple’s restrictions on where and how  
27 developers can communicate with their users about their options for purchasing in-app content  
28 create significant barriers to competition and artificially inflate prices.

1           **Meta.** Meta offers several paid products within its apps that are impacted by  
 2 Apple’s anti-steering restrictions. For example, Meta offers a product called “Boost Posts” that  
 3 allow companies to “boost” their social media posts on Facebook and Instagram pages to better  
 4 attract potential consumers.<sup>13</sup> The businesses that choose to boost their posts are typically small  
 5 businesses seeking simple methods to advertise their products and services. Meta has therefore  
 6 enabled businesses to boost posts not only through sophisticated ads tools like Facebook Ads  
 7 Manager, but also through simplified interfaces accessible through Meta’s Facebook and  
 8 Instagram mobile apps and in its Facebook desktop experience.

9           For years, Apple did not apply its requirement to use IAP and to pay the associated  
 10 30% commission to advertising products like Boost Post. In fact, in its April 2021 proposed  
 11 findings of fact and conclusions of law in this litigation, Apple acknowledged its longstanding  
 12 policy that free apps that “monetize through an advertising model . . . pay Apple nothing.” (Dkt.  
 13 No. 410 ¶ 48.3.) But in 2022, Apple reversed its position and revised its policies to require that  
 14 all Boost Post purchases made on Apple devices use IAP.<sup>14</sup> This policy change harms the small  
 15 businesses and other advertisers that use Boost Post by increasing the cost of using boosted posts  
 16 to promote their products and services, among other problems. Under the Court’s injunction, Meta  
 17 should be permitted to direct its users to purchasing mechanisms on non-IAP channels, which  
 18 would facilitate price competition, allow small businesses that advertise on Meta’s social networks  
 19 to save on advertising costs, and alleviate the other problems that Apple’s 2022 policy change  
 20 created. But Apple’s continued use of non-steering restrictions as part of the Apple Plan — as  
 21 well as its 27% commission — means that Apple’s policy change will continue to harm Meta and  
 22 its users.

23           **Microsoft.** Apple’s failure to comply with the terms of the injunction has also made  
 24 it effectively impossible for Microsoft to offer its users alternatives to Apple’s IAP that could

25 \_\_\_\_\_  
 26 <sup>13</sup> This product is referred to as “Promoted Post” on Instagram.

27 <sup>14</sup> Ben Lovejoy, *Facebook and Instagram boosts now have to give Apple a cut; Meta calls it*  
 28 *a tax*, 9TO5MAC (Oct. 26, 2022), <https://9to5mac.com/2022/10/26/instagram-boosts/#:~:text=Apple%20now%20wants%20a%2030,maker%20gets%20a%2030%25%20cut.>

1 benefit users. For example, Microsoft offers a number of cross-platform services by subscription.  
2 Under Apple’s Guidelines, Microsoft could not steer iOS users to payment platforms where it  
3 could offer better promotions, discounts, or ways to manage their subscriptions. That remains true  
4 under the Apple Plan: Microsoft has no ability to effectively direct users to a separate Microsoft  
5 platform for payment, and, even if it did, Microsoft cannot offer users discounts or other incentives  
6 to use alternative payments because it obtains no cost savings. Microsoft also offers games and  
7 gaming services that are largely monetized through in-app purchases; the terms of the Apple Plan  
8 make it virtually impossible for Microsoft to steer iOS gamers to other payment mechanisms.

9 X. X offers its users a similar range of in-app products that are negatively impacted  
10 by Apple’s anti-steering restrictions and its anti-competitive 27% “tax” on purchases through an  
11 external link. Among other paid subscription products on X, users have access to various Premium  
12 Subscriptions and Creator Subscriptions. Under the Apple Plan, if an X user subscribed to any of  
13 these products through an external payment platform accessed by clicking an external link within  
14 the app, the subscription would be subject to Apple’s 27% commission and anti-steering  
15 restrictions. Apple’s onerous terms thus eliminate any economic justification for X to encourage  
16 users to pay through an external link within the app, in effect nullifying the injunction that Epic  
17 obtained against Apple.

18 Indeed, Apple’s anti-steering restrictions and commissions harm not only X itself  
19 but its users directly. For example, through Creator Subscriptions, X allows users to subscribe to  
20 other users’ (known as “creators”) original content, including exclusive video, live spaces,  
21 newsletters, real-time breaking news, and other content. X does not currently take a cut of Creator  
22 Subscription revenues, and instead passes 100% of Creator Subscription revenues, net of fees,  
23 along to the creators themselves. Creators on the X platform are thus particularly harmed by  
24 Apple’s 27% commission, since the commission means that creators will receive at most 73 cents  
25 on every dollar of subscription revenue they generate through users seeking to subscribe through  
26 the Apple ecosystem.

27 Moreover, the dozens of restrictions Apple places on external payment links, as set  
28 forth in Apple’s external link entitlement, ensure that no viable external payment system for

1 creators can develop on the X platform for iOS users. Under the weight of these many restrictions  
2 that are designed to create maximum friction between a user and their available payment options,  
3 X is strongly disincentivized from linking to out-of-app payment options at all. Accordingly, the  
4 Apple Plan all but guarantees the very same anti-choice outcomes that this Court found to be  
5 “supracompetitive” and unjustified. *See, e.g., Epic Games*, 559 F. Supp. 3d at 1056–57.

6 **Match Group.** Developers like Match Group offer users the ability to purchase  
7 services such as subscriptions and á la carte features as they use the app. Yet the Apple Plan forces  
8 these developers into placing a single external link on a static app page within tightly  
9 circumscribed template language, and not in places users are already presented with purchase  
10 options using Apple’s IAP. (Dkt. No. 874, Ex. 2 § 3.3.) Thus, under the Apple Plan “developers  
11 cannot communicate lower prices on other platforms” in the many instances where consumers  
12 would make a purchase, and “Apple’s [new] policy also prevents developers from informing users  
13 of its [27]% commission” anywhere within their apps. *Epic Games*, 559 F. Supp. 3d at 1055.  
14 These restrictions on Match Group and other developers prevent full and fair cross-platform price  
15 competition.

16 Apple appears to read the injunction as requiring that Apple permit developers to  
17 merely allow just one of (i) buttons, (ii) external links, or (iii) calls to action “that direct customers  
18 to purchasing mechanisms.” (*See* Dkt. No. 813.) However, the injunction “restrain[s] and  
19 enjoin[s]” Apple from “prohibiting developers from” each of the three methods “that direct  
20 customers to purchasing mechanisms”. (*Id.*) Apple’s selective limiting of the injunction violates  
21 the injunction’s letter and spirit, and it prevents developers like Match Group from including  
22 buttons and other calls to action that would facilitate cross-platform information to consumers,  
23 which this Court has found “is crucial.” *Epic Games*, 559 F. Supp. 3d at 1055.

24 And, as shown *supra* (*see* § II.B), Apple’s imposition of a 27% commission results  
25 in total costs that are effectively equivalent to, or higher, than Apple’s own IAP commission, which  
26 stymies price competition and makes the external link out option an unattractive option for  
27 developers.

28 The Apple Plan similarly will impact many thousands of other developers and their

1 millions of users, frustrating the injunction’s purpose of enhancing price competition across all  
2 digital transactions.

3 **IV. THE APPLE PLAN SHOULD BE REJECTED FOR FAILING TO COMPLY**  
4 **WITH THE LETTER AND THE SPIRIT OF THE INJUNCTION.**

5 As described above and in Epic’s Motion to Enforce, Apple has ignored the express  
6 mandate of this Court’s injunction by continuing to disallow “other calls to action” that “encourage  
7 users to use a purchasing method other than in-app purchase,” and the Apple Plan places obstacles  
8 in the path to achieving the greater transparency and price competition that the injunction was  
9 intended to foster. (*See* Epic Brief, Dkt. No. 897, at 20–23.) The Apple Plan ensures the  
10 preservation of the *status quo*, notwithstanding this Court’s clear imperative that Apple remove  
11 barriers to the dissemination of truthful information about prices and alternative payment options.  
12 Instead, Apple continues to maintain anti-steering provisions in its Guidelines (including  
13 provisions expressly condemned by this Court) and creates so many restrictions on the provision  
14 of information to consumers about alternative payment options that it puts developers in essentially  
15 the same position they were in before the injunction.

16 Although Apple’s failure to comply with the express terms of the injunction,  
17 standing alone, provides sufficient basis for rejecting the Apple Plan, the Court should also reject  
18 the Apple Plan for violating the spirit of the Court’s injunction and Trial Order. In deciding  
19 whether an injunction has been violated, courts look to the “objective in issuing the injunction”  
20 and consider whether an enjoined party violated “the spirit of the injunction,” even if “its strict  
21 letter may not have been disregarded.” *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation*  
22 *Soc’y*, 774 F.3d 935, 949 (9th Cir. 2014) (quoting *John B. Stetson Co. v. Stephen L. Stetson Co.*,  
23 128 F.2d 981, 983 (2d Cir. 1942)); *see also Zest Anchors, LLC v. Geryon Ventures, LLC*, 2022  
24 WL 16838806, at \*3 (S.D. Cal. Nov. 9, 2022) (defendants’ “self-serving interpretation of their  
25 obligations” violated the injunction); *Federal Trade Comm’n v. Productive Marketing, Inc.*, 136  
26 F. Supp. 2d 1096, 1108 (C.D. Cal. 2001) (ordering contempt sanctions where “clear and  
27 convincing evidence that [the defendant] ha[d] not substantially complied” with injunction).

28 Thus, in *Zest Anchors*, the court found that the defendant had violated an injunction





1 “supracompetitive” commission, but also has numerous other Apple-dictated disadvantages  
2 relative to IAP. *See Epic Games*, 559 F. Supp. 3d at 1056–57. Apple will not be forced in either  
3 of these scenarios to “compete on the benefits of its centralized model” as this Court intended. *Id.*  
4 at 1014. Rather, Apple will continue to operate in exactly the manner this Court found to be  
5 unlawful, “hid[ing] critical information from consumers and illegally stifl[ing] consumer choice.”  
6 *Id.* at 922. For these reasons, *Amici* respectfully request that this Court reject the Apple Plan.

7  
8 Dated: March 20, 2024

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**ATTESTATION**

I, Brendan P. Cullen, am the ECF User whose ID and password are being used to file this document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories concur with this filing.

Dated: March 20, 2024

/s/ Brendan P. Cullen  
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