

1 Paul J. Riehle (SBN 115199)
2 paul.riehle@faegredrinker.com
3 **FAEGRE DRINKER BIDDLE &**
4 **REATH LLP**
5 Four Embarcadero Center, 27th Floor
6 San Francisco, CA 94111
7 Telephone: (415) 591-7500

8 Christine A. Varney (*pro hac vice*)
9 cvarney@cravath.com
10 **CRAVATH, SWAINE & MOORE LLP**
11 825 Eighth Avenue
12 New York, New York 10019
13 Telephone: (212) 474-1000

14 *Counsel for Plaintiff Epic Games, Inc.*

15 [Additional counsel appear on signature page]

Douglas J. Dixon (SBN 275389)
ddixon@hueston.com
HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Telephone: (949) 229-8640

*Counsel for Plaintiffs Match Group,
LLC, et al.*

Glenn D. Pomerantz (SBN 112503)
glenn.pomerantz@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 683-9100

Brian C. Rocca (SBN 221576)
brian.rocca@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: (415) 442-1000

Counsel for Defendants Google LLC et al

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Match Group, LLC et al. v. Google LLC et al.,
Case No. 3:22-cv-02746-JD

Case No. 3:21-md-02981-JD

**JOINT PROPOSED
JURY VERDICT FORM
AND OBJECTIONS**

Judge: Hon. James Donato
Trial Date: November 6, 2023
Time: 9:00 am
Place: Courtroom 11, 19th Floor

TABLE OF CONTENTS

1

2 Plaintiffs’ Proposed Verdict Form 3

3 Defendants’ Proposed Verdict Form 15

4 Plaintiffs’ Argument Re Verdict Form 44

5 Defendants’ Argument Re Verdict Form..... 46

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Plaintiffs' Proposed Verdict Form

Please answer the following Questions in accordance with the Jury Instructions given to you by the Court. Mark your answers by placing an X in the space provided.

Plaintiffs' Claims

Monopolization—Section 2 of the Sherman Act

1. Have plaintiffs proven, by a preponderance of the evidence, that Google unlawfully acquired or maintained monopoly power in a relevant antitrust market that includes the Google Play Store?

YES ____ NO ____

Continue to Question No. 2.

2. Have plaintiffs proven, by a preponderance of the evidence, that Google unlawfully acquired or maintained monopoly power in a relevant antitrust market that includes Google Play Billing?

YES ____ NO ____

Continue to Question No. 3.

Attempted Monopolization—Section 2 of the Sherman Act

3. Have plaintiffs proven, by a preponderance of the evidence, that Google unlawfully attempted to monopolize a relevant antitrust market that includes Google Play Billing?

YES ____ NO ____

Continue to Question No. 4.

**Unlawful Restraints of Trade—Section 1 of the Sherman Act
and the California Cartwright Act**

1
2
3 4. Have plaintiffs proven, by a preponderance of the evidence, that Google entered into an
4 agreement not to compete with one or more of Activision, Riot, or Supercell?

5 YES ___ NO ___
6

7 *Continue to Question No. 5.*
8

9 5. Have plaintiffs proven, by a preponderance of the evidence, that Google entered into one or
10 more agreements that unreasonably restrained trade in a relevant antitrust market that includes
11 the Google Play Store?

12 YES ___ NO ___
13

14 *Continue to Question No. 6.*
15

16 6. Have plaintiffs proven, by a preponderance of the evidence, that Google entered into one or
17 more agreements that unreasonably restrained trade in a relevant antitrust market that includes
18 Google Play Billing?

19 YES ___ NO ___
20

21 *Continue to Question No. 7.*
22
23
24
25
26
27
28

**Tying—Section 1 of the Sherman Act
and the California Cartwright Act**

1
2
3 7. Have plaintiffs proven, by a preponderance of the evidence, that Google maintained a *per se*
4 illegal tie of Google’s Android app store (Google Play Store) and Google’s payment processor
5 (Google Play Billing)?

6 YES ____ NO ____

7
8 ***Continue to Question No. 8.***

9
10 8. Have plaintiffs proven, by a preponderance of the evidence, that Google unlawfully tied use of
11 its Android app store (Google Play Store) to use of Google’s payment processor (Google Play
12 Billing) under the rule of reason?

13 YES ____ NO ____

Injury

If you answered Yes to any preceding Question, continue to Question No. 9. If you answered No to all preceding Questions, skip to Question No. 12.

9. Did any of Google’s anti-competitive conduct you found unlawful in the previous questions cause injury to Epic in its business or property?

YES _____ NO _____

Continue to Question No. 10.

10. Did any of Google’s anti-competitive conduct you found unlawful in the previous questions cause injury to Match in its business or property?

YES _____ NO _____

Damages

If you answered Yes to Question No. 10, continue to Question No. 11. If you answered No to Question No. 10, skip to Question No. 12.

11. We award Match the following damages for Google’s anti-competitive conduct:

\$ _____

Continue to Question No. 12.

**Match's Claims for Interference with Contractual Relations
and Interference with Prospective Economic Relations**

12. Has Match proven, by a preponderance of the evidence, that Google intentionally interfered with one or more contracts between Match and its users?

YES ___ NO ___

Continue to Question No. 13.

13. Has Match proven, by a preponderance of the evidence, that Google intentionally interfered with one or more prospective economic relationships between Match and its users?

YES ___ NO ___

Google's Counterclaims

If you answered Yes to any of Questions No. 1, 2, 3, 7 or 8, or you answered Yes to either Question No. 5 or 6 (and you found that Google's Developer Distribution Agreement and/or its Payments Policy unreasonably restrained trade), then do not answer any other questions; sign and date this Verdict Form and inform the Court that the jury has reached a verdict. Otherwise, continue to Question No. 14.

14. Has Google proven, by a preponderance of the evidence, that Epic breached the Google Play Payments Policy with Google by not exclusively using Google Play Billing in its app distributed through the Google Play Store, causing damage to Google?

YES _____ NO _____

Continue to Question No. 15.

15. Has Google proven, by a preponderance of the evidence, that between September 21, 2021 and March 31, 2022, Match breached the Google Play Payments Policy with Google by not exclusively using Google Play Billing in its apps distributed through the Google Play Store?

YES _____ NO _____

Continue to Question No. 16.

16. Has Google proven, by a preponderance of the evidence, that after March 31, 2022, Match breached the Google Play Payments Policy with Google by not exclusively using Google Play Billing in its apps distributed through the Google Play Store?

YES _____ NO _____

Continue to Question No. 17

1 17. Has Google proven, by a preponderance of the evidence, that Epic breached the implied
2 covenant of good faith and fair dealing incorporated into the Developer Distribution Agreement
3 with Google, causing damage to Google?

4 YES ___ NO ___
5

6 *Continue to Question No. 18.*
7

8 18. Has Google proven, by a preponderance of the evidence, that Match breached the implied
9 covenant of good faith and fair dealing incorporated into the Developer Distribution Agreement
10 with Google, causing damage to Google?

11 YES ___ NO ___
12

13 *Continue to Question No. 19.*
14

15 19. Has Google proven, by a preponderance of the evidence, that Epic was unjustly enriched by
16 receiving benefits that it ought to have returned to Google, and that the unjust enrichment
17 related to a different subject than the Developer Distribution Agreement between Google and
18 Epic?

19 YES ___ NO ___
20

21 *Continue to Question No. 20.*
22
23
24
25
26
27
28

1 20. Has Google proven, by a preponderance of the evidence, that Match was unjustly enriched by
2 receiving benefits that it ought to have returned to Google, and that the unjust enrichment
3 related to a different subject than the Developer Distribution Agreement between Google and
4 Match?

5 YES ____ NO ____

6
7 *Continue to Question No. 21.*

8
9 21. Has Google proven, by a preponderance of the evidence, that Match falsely promised to Google
10 that it would comply with the Payments Policy by March 31, 2022?

11 YES ____ NO ____
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 ***If you answered Yes to either of Questions No. 14 or 17, continue to Question No. 22. Otherwise,***
2 ***skip to Question No. 23.***

3 22. We award Google the following damages for its breach of contract counterclaims against Epic:
4

5 \$ _____
6

7 *(Award no more than \$398,931.)*
8

9 ***If you answered Yes to Question No. 19, continue to Question No. 23. Otherwise, skip to Question***
10 ***No. 24.***

11
12 23. We award Google the following damages for its unjust enrichment counterclaim against Epic:
13

14 \$ _____
15

16 *(Award no more than \$240,652.)*
17
18
19
20
21
22
23
24
25
26
27
28

1 *If you answered Yes to any of Questions No. 15, 16, 18, 20, or 21, continue to Question No. 24. If*
2 *you answered No to all of Questions No. 15, 16, 18, 20, and 21, then do not answer Question No. 24;*
3 *sign and date this Verdict Form and inform the Court that the jury has reached a verdict.*

4 24. We award Google the following damages for its counterclaim(s) against Match:

5
6 \$ _____
7

8
9
10 *Sign and date this Verdict Form and inform the Court that the jury has reached a verdict.*

11
12
13 Dated: _____

14 _____

15 Foreperson
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants’ Proposed Verdict Form

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Mark your answers by placing an X in the space provided.

We, the jury, unanimously agree to the answers to the following questions submitted to us, and we return them as our verdict in this case as follows:

Plaintiffs’ Claims

Monopolization—Section 2 of the Sherman Act—Alleged App Distribution Market

1. Alleged Android App Distribution Market:

(a) Have plaintiffs proven the existence of a product market that plaintiffs have defined as the Android App Distribution market?

YES ___ NO ___

(b) If you answered “yes” to Question 1(a), have plaintiffs proven that the Android App Distribution market includes the entire world except for China?

YES ___ NO ___

If you answered “no” to either Question 1(a) or Question 1(b) then stop here and consider the next claim. If you answered “yes” to both Question 1(a) and Question 1(b), then continue to Question 2.

2. Have plaintiffs proven that Google has monopoly power in the Android App Distribution Market?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 3.

3. Have plaintiffs proven that Google engaged in conduct that substantially harmed competition in the market that you found when you answered Questions 1(a) and 1(b)?

YES ___ NO ___

1 ***If you answered “no,” then you should then stop your consideration of this claim here and***
2 ***move to the next claim. If you answered “yes,” continue to Question 4.***

3 4. Has Google shown that its conduct had some procompetitive benefits?

4 YES ___ NO ___

5 ***If you answered “no,” then skip Questions 5-6 and continue to Question 7. If you answered***
6 ***“yes,” then continue to Question 5.***

7 5. Have plaintiffs proven that each and every procompetitive benefit could be achieved through
8 substantially less restrictive means?

9 YES ___ NO ___

10 ***If you answered “yes,” skip Question 6 and continue to Question 7. If you answered “no,”***
11 ***then continue to Question 6.***

12 6. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive
13 benefits?

14 YES ___ NO ___

15 ***If you answered “yes,” continue to Question 7. If you answered “no,” then you must stop***
16 ***your consideration of this claim here and move to the next claim.***

17 7. Have the following plaintiffs proven that they suffered injury to their business or property as a
18 result of Google’s conduct for which you answered YES in response to Questions 5 or 6?

19 Epic: YES ___ NO ___

20 Match Group, LLC: YES ___ NO ___

21 Humor Rainbow, Inc.: YES ___ NO ___

22 PlentyofFish Media, ULC: YES ___ NO ___

23 People Media, Inc.: YES ___ NO ___

Monopolization—Section 2 of the Sherman Act—Alleged In-App Billing Services Market

8. Alleged Android In-App Billing Services Market:

(a) Have plaintiffs proven the existence of a product market that plaintiffs have defined as the Android In-App Billing Services Market?

YES ___ NO ___

(b) If you answered “yes” to Question 8(a), have plaintiffs proven that the Android In-App Billing Services market includes the entire world except for China?

YES ___ NO ___

If you answered “no” to either Question 8(a) or Question 8(b), then stop your consideration of this claim here and move to the next claim. If you answered “yes” to both Question 8(a) and Question 8(b), then continue to Question 9.

9. Have plaintiffs proven that Google has monopoly power in the Android In-App Billing Services Market?

YES ___ NO ___

If you answered “no,” then stop your consideration of this claim here and move to the next claim. If you answered “yes,” continue to Question 10.

10. Have plaintiffs proven that the Developer Distribution Agreement’s Payments Policy substantially harmed competition in the relevant market that you found when you answered Questions 8(a) and 8(b)?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 11.

11. Has Google shown that the Developer Distribution Agreement’s Payments Policy has some procompetitive benefits?

YES ___ NO ___

1 ***If you answered “no,” then skip Questions 12-13 and continue to Question 14. If you***
2 ***answered “yes,” then continue to Question 12.***

- 3 12. Have plaintiffs proven that each and every procompetitive benefit could be achieved through
4 substantially less restrictive means?

5 YES ___ NO ___

6 ***If you answered “yes,” then skip Question 13 and continue to Question 14. If you answered***
7 ***“no,” then continue to Question 13.***

- 8 13. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive
9 benefits?

10 YES ___ NO ___

11 ***If you answered “yes,” continue to Question 14. If you answered “no,” then you must stop***
12 ***your consideration of this claim here and move to the next claim.***

- 13 14. Have the following plaintiffs proven that they suffered injury to its business or property as a
14 result of Google’s conduct for which you answered YES in response to Questions 12 or 13?

15 Epic: YES ___ NO ___

16 Match Group, LLC: YES ___ NO ___

17 Humor Rainbow, Inc.: YES ___ NO ___

18 PlentyofFish Media, ULC: YES ___ NO ___

19 People Media, Inc.: YES ___ NO ___
20
21
22
23
24
25
26
27
28

Attempted Monopolization—Section 2 of the Sherman Act

If you answered “no” to either Questions 8(a) or 8(b), then stop your consideration of this claim and move to the next claim. If you answered “yes” to both Questions 8(a) and 8(b), then consider this claim beginning with Question 15.

15. Have the Match Plaintiffs proven that Google adopted and implemented its Payments Policy with a specific intent to achieve monopoly power in the Android In-App Billing Services market?

YES ___ NO ___

If you answered “no,” then stop your consideration of this claim here and move to the next claim. If you answered “yes,” continue to Question 16.

16. Have the Match Plaintiffs proven that there was a dangerous probability that Google would achieve its goal of monopoly power in the Android In-App Billing Services market?

YES ___ NO ___

If you answered “No,” then stop your consideration of this claim here and move to the next claim. If you answered “yes,” continue to Question 17.

17. Has Google shown that its Payments Policy has some procompetitive benefits?

YES ___ NO ___

If you answered “no,” then skip Questions 18-19 and continue to Question 20. If you answered “yes,” then continue to Question 18.

18. Have plaintiffs proven that each and every procompetitive benefit could be achieved through substantially less restrictive means?

YES ___ NO ___

If you answered “yes,” then skip Question 19 and continue to Question 20. If you answered “no,” then continue to Question 19.

19. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive benefits?

YES ___ NO ___

If you answered “no,” then you must stop your consideration of this claim here and move to the next claim. If you answered “yes,” continue to Question 20.

1 20. Have the following plaintiffs proven that they suffered injury to their business or property as a
2 result of Google's conduct for which you answered YES to Questions 18 or 19?

3 Match Group, LLC: YES ____ NO ____

4 Humor Rainbow, Inc.: YES ____ NO ____

5 PlentyofFish Media, ULC: YES ____ NO ____

6
7 People Media, Inc.: YES ____ NO ____
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Per Se Unlawful Restraints of Trade—Section 1 of the Sherman Act and the California Cartwright Act—Games Velocity Program¹

21. Have plaintiffs proven that Activision, Riot, or Supercell were competitors with the Google Play store?

Activision: YES ___ NO ___

Riot: YES ___ NO ___

Supercell: YES ___ NO ___

If you answered “no” to all three, then stop here and move to the next claim. If you answered “yes” to any of the three, then continue to Question 22, but only with regard to the developers for which you answered “yes,” in response to Question 21.

22. Have plaintiffs proven that Google entered into a contract not to compete with one or more of Activision, Riot, or Supercell in the market for Android app distribution services?

Activision: YES ___ NO ___

Riot: YES ___ NO ___

Supercell: YES ___ NO ___

If you did not answer “yes” to any part of the previous question, then stop here and consider the next claim. If you answered “yes” to any of the three, then continue to Question 23, but only with regard to those developers for which you answered “yes” in response to Question 22.

23. Have the following plaintiffs proven that they suffered injury to their business or property as a result of the agreements with the developers for which you answered YES in response to Question 22?

Epic: YES ___ NO ___

Match Group, LLC: YES ___ NO ___

Humor Rainbow, Inc.: YES ___ NO ___

¹ As explained in its position statements regarding disputed jury instructions, Google objects to the *per se* Section 1 claims being submitted to the jury. Google proposes these questions in the event that its objection is overruled.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PlentyofFish Media, ULC: YES ___ NO ___

People Media, Inc.: YES ___ NO ___

Unlawful Restraints of Trade—Rule of Reason—Section 1 of the Sherman Act and the California Cartwright Act—Alleged App Distribution Market

If you answered “no” to either Question 1(a) or 1(b), then you must stop here and consider the next claim. If you answered “yes” to both Questions 1(a) and 1(b), then you should consider this claim.

24. Have plaintiffs proven that Google has market power in a market that plaintiffs have defined as the Android App Distribution market for the entire world except for China?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” then continue to Question 25.

25. Have plaintiffs proven that Google entered into agreements that substantially harmed competition in the market that you found in response to Questions 1(a) and 1(b)?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” then continue to Question 26.

26. Has Google shown that the conduct for which you answered YES in response to Question 25 has some procompetitive benefits?

YES ___ NO ___

If you answered “no,” then skip Questions 27-28 and continue to Question 29. If you answered “yes” to any of these categories, then continue to Question 27.

27. Have plaintiffs proven that each and every procompetitive benefit could be achieved through substantially less restrictive means?

YES ___ NO ___

If you answered “yes,” then skip Question 28 and continue to Question 29. If you answered “no,” then continue to Question 28.

28. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive benefits?

YES ___ NO ___

1 ***If you answered “yes,” continue to Question 29. If you answered “no,” then you must stop***
2 ***your consideration of this claim here and move to the next claim.***

3 29. Have the following plaintiffs proven that they suffered injury to their business or property as a
4 result of Google’s conduct for which you answered YES to Questions 27 or 28?

5 Epic: YES ___ NO ___

6 Match Group, LLC: YES ___ NO ___

7 Humor Rainbow, Inc.: YES ___ NO ___

8 PlentyofFish Media, ULC: YES ___ NO ___

9
10 People Media, Inc.: YES ___ NO ___

**Unlawful Restraints of Trade—Rule of Reason—Section 1 of the Sherman Act
and the California Cartwright Act—Alleged In-App Billing Services Market**

If you answered “no” to either Question 8(a) or 8(b), then you must stop here and consider the next claim. If you answered “yes” to both Questions 8(a) and 8(b), then you should consider this claim.

30. Have plaintiffs proven that Google has market power in a market that plaintiffs have defined as the market for In-App Billing Services on Android Devices for the entire world except for China?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” then continue to Question 31.

31. Have plaintiffs proven that Google’s Payments Policy substantially harmed competition in the relevant market that you found in response to Questions 8(a) and 8(b)? If you did not find the Payments Policy to be unlawful when you considered plaintiffs’ Section 2 claims, then you cannot find them to be unlawful here.

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 32.

32. Has Google shown that its Payments Policy has some procompetitive benefits?

YES ___ NO ___

If you answered “no,” then skip Questions 33-34 and continue to Question 35. If you answered “yes,” continue to Question 33.

33. Have plaintiffs proven that each and every procompetitive benefit could be achieved through substantially less restrictive means?

YES ___ NO ___

If you answered “yes,” then skip Question 34 and continue to Question 35. If you answered “no,” then continue to Question 34.

34. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive benefits?

YES ___ NO ___

1 ***If you answered “yes,” continue to Question 35. If you answered “no,” then you must stop***
2 ***your consideration of this claim here and move to the next claim.***

3 35. Have the following plaintiffs proven that they suffered injury to their business or property as a
4 result of Google’s conduct for which you answered YES in response to Questions 33 or 34?

5 Epic: YES ___ NO ___

6 Match Group, LLC: YES ___ NO ___

7 Humor Rainbow, Inc.: YES ___ NO ___

8 PlentyofFish Media, ULC: YES ___ NO ___

9 People Media, Inc.: YES ___ NO ___

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Tying—Section 1 of the Sherman Act
and the California Cartwright Act**

Only answer these questions if you answered “yes” to Questions 8(a), 8(b) and 24. If you answered “no” to Questions 8(a), 8(b), or 24, then you should skip this claim and you should also skip Google’s business justification defense that follows this claim.

36. Have plaintiffs proven that app distribution services and in-app billing services are separate and distinct products?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 37.

37. Have plaintiffs proven that Google has sufficient market power with respect to the app distribution services to enable it to restrain competition as to an alleged market for in-app billing services?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 38.

38. Have plaintiffs proven that Google coerced purchasers of app distribution services to also purchase Google Play Billing, or not to purchase in-app billing services from any other supplier?

YES ___ NO ___

If you answered “no,” then stop here and consider the next claim. If you answered “yes,” continue to Question 39.

39. Have plaintiffs proven that the alleged tying arrangement has foreclosed a substantial volume of commerce as to an alleged market for in-app billing services?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 40.

40. Have plaintiffs proven that the tying arrangement caused substantial harm to competition in the Android In-App Billing Services market?

YES ___ NO ___

1 ***If you answered “no,” then stop here and consider the next claim. If you answered “yes,”***
2 ***then continue to Question 41.***

3 41. Has Google shown that the tying arrangement has some procompetitive benefits?

4 YES ___ NO ___

5 ***If you answered “no,” then skip Questions 42-43 and continue to Question 44. If you***
6 ***answered “yes,” then continue to Question 42.***

7 42. Have plaintiffs proven that each and every procompetitive benefit could be achieved through
8 substantially less restrictive means?

9 YES ___ NO ___

10 ***If you answered “yes,” then skip Question 43 and continue to Question 44. If you answered***
11 ***“no,” then continue to Question 43.***

12 43. Have plaintiffs proven that the competitive harm substantially outweighs the procompetitive
13 benefits?

14 YES ___ NO ___

15 ***If you answered “yes,” continue to Question 44. If you answered “no,” then you must stop***
16 ***your consideration of this claim here and move to the next claim.***

17 44. Have the following plaintiffs proven that they suffered injury to their business or property as a
18 result of the tying arrangement?

19 Epic: YES ___ NO ___

20 Match Group, LLC: YES ___ NO ___

21 Humor Rainbow, Inc.: YES ___ NO ___

22 PlentyofFish Media, ULC: YES ___ NO ___

23 People Media, Inc.: YES ___ NO ___

24
25 ***Even if you answered YES to any with regard to any of the plaintiffs listed in Question 44,***
26 ***you must consider Google’s business justification defense. If Google has proven that***
27 ***defense, then you may not find Google liable for plaintiffs’ tying claim, nor may you***
28 ***ultimately award damages to any Plaintiffs for their tying claim. Accordingly, continue to***
the next question.

Tying—Business Justification Defense

1
2
3 45. Has Google proven a business justification for the alleged tying arrangement?

4 YES ___ NO ___

5 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
6 *continue to Question 46.*

7 46. Have plaintiffs proven that Google’s business justification could be achieved through
8 substantially less restrictive means?

9 YES ___ NO ___

10 *If you answered “no” to this question, you must find for Google and against plaintiffs on*
11 *plaintiffs’ tying claims, and you may not award any plaintiff any damages based on their*
12 *tying claim.*

Damages

The Match Plaintiffs seek damages from Google under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

47. We award the following damages caused by Google's anti-competitive conduct:

Match Group, LLC: \$ _____

PlentyofFish Media ULC: \$ _____

Humor Rainbow, Inc: \$ _____

People Media, Inc: \$ _____

**Match Plaintiffs' Claims for Interference with Contractual Relations
and Interference with Prospective Economic Relations**

If for each of plaintiffs' claims on this verdict form your last answer to a question was "no," then you must skip this claim.

48. Have the Match Plaintiffs proven that there was a contract between the Match Plaintiffs and their users?

YES ___ NO ___

If you answered "no," then stop here and consider the next claim. If you answered "yes," continue to Question 49.

49. Have the Match Plaintiffs proven that Google knew of the contract(s) between the Match Plaintiffs and their users?

YES ___ NO ___

If you answered "no," then stop here and consider the next claim. If you answered "yes," continue to Question 50.

50. Have the Match Plaintiffs proven that Google's conduct prevented performance or made performance more expensive or difficult?

YES ___ NO ___

If you answered "no," then stop here and consider the next claim. If you answered "yes," continue to Question 51.

51. Have the Match Plaintiffs proven that Google intended to disrupt the performance of the contract(s) at issue

YES ___ NO ___

If you answered "no," then stop here and consider the next claim. If you answered "yes," continue to Question 52.

52. Was Google's conduct a substantial factor in causing harm to the Match Plaintiffs?

YES ___ NO ___

1 *Even if you answered “yes” to all of the questions in this section, you must consider Google’s*
2 *defense that Google had a privilege to protect its own economic interest. If Google has*
3 *proven that defense, then you may not find Google liable for the Match Plaintiffs’ claims for*
4 *Interference with Contractual Relations and Interference with Prospective Economic*
5 *Relations, nor may you award damages to the Match Plaintiffs for those claims.*
6 *Accordingly, continue to the next question.*
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Google’s Affirmative Defense - Privilege to Protect Own Economic Interest

1
2
3 53. Has Google proven that it had a legitimate interest in the contractual relations because, among
4 other things, the Match Plaintiffs distribute their apps by using Google’s distribution services
on the Google Play store?

5 YES ___ NO ___

6 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
7 *continue to Question 54.*

8 54. Has Google shown that it acted only to protect its own economic interest?

9 YES ___ NO ___

10 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
11 *continue to Question 55.*

12 55. Has Google shown that it acted reasonably and in good faith to protect its own economic
13 interest?

14 YES ___ NO ___

15 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
16 *continue to Question 56.*

17 56. Did Google act reasonably and in good faith to protect its own economic interest?

18 YES ___ NO ___

19 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
20 *continue to Question 57.*

21 57. Did Google use appropriate means to protect its own economic interest?

22 YES ___ NO ___

23 *If you answered “yes” to each of these questions, then you must find for Google and against*
24 *the Match Plaintiffs’ on their claims for Interference with Contractual Relations and*
25 *Interference with Prospective Economic Relations.*
26
27
28

Google's Counterclaims

Google's Breach of Contract Counterclaim Against Epic

1
2
3 1. Did Google and Epic enter a contract (the Developer Distribution Agreement)?

4 YES ___ NO ___

5
6 *If you answered "No," then stop here and consider the next claim. If you answered "yes,"*
7 *continue to Question 2.*

8 2. Did Epic fail to do something that the Developer Distribution Agreement required it to do or do
9 something that the contract prohibited it from doing?

10 YES ___ NO ___

11 *If you answered "No," then stop here and consider the next claim. If you answered "yes,"*
12 *continue to Question 3.*

13 3. Was Google harmed by Epic's breach of the Developer Distribution Agreement?

14 YES ___ NO ___

15 *If you answered "No," then stop here and consider the next claim. If you answered "yes,"*
16 *continue to Question 4.*

17 4. What are Google's damages from Epic's breach of the Developer Distribution Agreement?

18 \$ _____

Google’s Breach of Contract Counterclaim Against the Match Plaintiffs

5. Did Google and the Match Plaintiffs enter a contract (the Developer Distribution Agreement)?

YES ____ NO ____

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 6.

6. Did the Match Plaintiffs fail to do something that the Developer Distribution Agreement required them to do or do something that the contract prohibited them from doing?

YES ____ NO ____

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 7.

7. Was Google harmed by the Match Plaintiffs’ breach of the Developer Distribution Agreement?

YES ____ NO ____

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 8.

8. What are Google’s damages from the Match Plaintiffs’ breach of the Developer Distribution Agreement?

\$ _____

1 **Google’s Breach of the Implied Covenant of Good Faith and Fair Dealing Counterclaim Against**
2 **Epic**

3 *If you awarded damages against Epic on Google’s breach of contract counterclaim against Epic,*
4 *then you should skip this counterclaim.*

5 9. Did Google and Epic enter a contract?

6 YES ____ NO ____

7 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
8 *continue to Question 10.*

9 10. Did Epic unfairly interfere with Google’s right to receive the benefits of the contract?

10 YES ____ NO ____

11 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
12 *continue to Question 11.*

13 11. Was Google harmed by Epic’s interference?

14 YES ____ NO ____

15 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
16 *continue to Question 12.*

17 12. What are Google’s damages from Epic’s breach of the implied covenant of good faith and fair
18 dealing?

19 \$ _____

Google’s False Promise Counterclaim against the Match Plaintiffs

13. Did the Match Plaintiffs make a promise to Google?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 14.

14. Did the Match Plaintiffs intend to perform this promise when they made it?

YES ___ NO ___

If you answered “yes,” then stop here and consider the next claim. If you answered “no,” continue to Question 15.

15. Did the Match Plaintiffs intend that Google rely on this promise?

YES ___ NO ___

If you answered “No,” then stop and consider the next claim. If you answered “yes,” continue to Question 16.

16. Did Google reasonably rely on this promise?

YES ___ NO ___

If you answered “yes,” then stop here and consider the next claim. If you answered “no,” continue to Question 17.

17. Did the Match Plaintiffs perform the promised act?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 18.

18. Was Google’s reliance on the Match Plaintiffs’ promise a substantial factor in causing harm to Google?

YES ___ NO ___

1 ***If you answered “No,” then stop here and consider the next claim. If you answered “yes,”***
2 ***continue to Question 19.***

3 19. What are Google’s damages from the Match Plaintiffs’ false promise?

4 \$ _____

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Google’s Breach of the Implied Covenant of Good Faith and Fair Dealing Counterclaim Against**
2 **the Match Plaintiffs**

3 *If you awarded damages against the Match Plaintiffs on Google’s false promise counterclaim, then*
4 *you should skip this counterclaim.*

5 20. Did Google and the Match Plaintiffs enter a contract?

6 YES ____ NO ____

7 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
8 *continue to Question 21.*

9 21. Did the Match Plaintiffs unfairly interfere with Google’s right to receive the benefits of the
10 contract?

11 YES ____ NO ____

12 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
13 *continue to Question 22.*

14 22. Was Google harmed by the Match Plaintiffs’ interference?

15 YES ____ NO ____

16 *If you answered “No,” then stop here and consider the next claim. If you answered “yes,”*
17 *continue to Question 23.*

18 23. What are Google’s damages from the Match Plaintiffs’ breach of the implied covenant of good
19 faith and fair dealing?

20 \$ _____

Google’s Quasi-Contract/Unjust Enrichment Counterclaim Against Epic

24. Did Epic receive a benefit in connection with its use of the Google Play store?

YES _____ NO _____

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 25.

25. Did Epic unjustly retain that benefit?

YES _____ NO _____

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 26.

26. What is the dollar value of the benefit that Epic retained?

\$ _____

Google’s Quasi-Contract/Unjust Enrichment Counterclaim Against the Match Plaintiffs

Only evaluate this counterclaim if you answered “no” to Question 5 on Google’s counterclaim against the Match Plaintiffs for breach of contract and Question 20 on Google’s counterclaim against the Match Plaintiffs for breach of the implied covenant of good faith and fair dealing. If you answered “yes” to those questions, then you must skip this counterclaim and move to Google’s next counterclaim.

27. Did the Match Plaintiffs receive a benefit in connection with their use of the Google Play store?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 28.

28. Did the Match Plaintiffs unjustly retain that benefit?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 29.

29. What is the dollar value of the benefit that the Match Plaintiffs retained?

\$ _____

Prejudgment Interest Against Epic and the Match Plaintiffs

If you decide that Google is entitled to recover damages for past economic loss for its false promise counterclaim against the Match Plaintiffs, then you must decide whether Google should also receive prejudgment interest for its losses.

30. Is Google entitled to prejudgment interest for its false promise counterclaim against the Match Plaintiffs?

YES _____ NO _____

Punitive Damages Against the Match Plaintiffs

Only answer these questions if you found the Match Plaintiffs liable for Google’s false promise counterclaim against the Match Plaintiffs.

31. Did the Match Plaintiffs engage in the conduct underlying Google’s false promise claim with malice, oppression, or fraud?

YES ___ NO ___

If you answered “No,” then stop here and consider the next claim. If you answered “yes,” continue to Question 34.

32. What amount of punitive damages, if any, do you award Google against the Match Plaintiffs?

\$ _____

Sign and date this Verdict Form and inform the Court that the jury has reached a verdict.

Dated: _____

Foreperson

Plaintiffs' Argument Re Verdict Form

1
2 Google's Proposed Verdict Form is 32 pages long and would require the jury to agree
3 unanimously on answers to over 100 questions (91 numbered questions plus additional subparts). This
4 proposal is unworkable, the questions are inaccurate as a matter of law, and Google improperly seeks
5 to prevent the jury from fully considering Plaintiffs' claims. Google's proposal is far more likely to
6 result in a hung jury or an incomplete verdict than a final resolution of this case. It should be rejected.

7 Rather than straightforwardly asking the jury whether the parties have proven each of their
8 claims (as Plaintiffs' proposed form does), Google's form would require the jury to deliver unanimous
9 answers to many dozens of confusing subsidiary factual questions. In many instances, *even when an*
10 *answer to Google's proposed question is not dispositive*, Google's proposal instructs the jury that an
11 answer in Google's favor requires the jury to stop its consideration of that claim. For example, in the
12 sections concerning Plaintiffs' monopolization claims, Google proposes asking "whether Plaintiffs
13 have proven the existence of a product market that plaintiffs have defined as the Android App
14 Distribution market" and whether that "market includes the entire world except for China". If the jury
15 answers "no" to either question, Google instructs the jury to skip to the next claim. But even if a jury
16 finds a different market than contended by Plaintiffs, the jury must still consider the remaining
17 elements of Plaintiffs' monopolization claims. *See Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 978
18 n.9 (9th Cir. 2023) (rejecting the "radical argument that . . . the case immediately ends if the district
19 court finds the record supports the defendant's proposed market (or a third in-between market, as was
20 the case here)"). For example, a finding that the markets implicated here are limited to the United
21 States (as Google contends) would not end the case. Google's form is replete with this type of error.

22 Google's proposed form is a recipe for a hung jury even where the jury could and should
23 deliver a unanimous verdict in Plaintiffs' favor. To take another example of error, Google's form
24 requests that the jury separately assess Google's conduct under a slanted and at times inaccurate
25 recitation of steps in the rule of reason. *See, e.g.*, Google's Question Nos. 3-6, 25-28. Per Google's
26 form, the jury must deliver a unanimous answer to each subsidiary question, and failure to answer
27 unanimously (in any direction) would result in a failure to resolve Plaintiffs' claims. The law does not
28 require that result. *See Jazzabi v. Allstate Ins. Co.*, 278 F.3d 979, 985 (9th Cir. 2002) (juries are not

1 required to “reach unanimous agreement on all the ‘preliminary factual issues that underlie the verdict’
2 only “the ultimate issues”). Google’s proposal would prevent the jury from returning a verdict even
3 when they unanimously agree on the “ultimate issues”, contrary to well established law and common
4 sense. For example, some jurors may decide that Google has not proven procompetitive benefits, other
5 jurors may decide that all proven benefits could be achieved through less restrictive alternatives, while
6 other jurors may decide that, regardless of the answer to the other questions, the harms outweigh any
7 benefits. Because all of these jurors would agree that Plaintiffs have proven their claims under the rule
8 of reason, such a jury could and should return a verdict in Plaintiffs’ favor. Courts hearing antitrust
9 claims have simply asked juries whether Plaintiffs have proven their rule of reason claims by *any*
10 alternative method. *See, e.g., Verdict Form, In re HIV Antitrust Litig.*, No. 19-cv-02573-EMC, Dkt.
11 No. 2057, at Question 4 (N.D. Cal. July 30, 2023) (“did the Plaintiffs do at least one of the following”).

12 Google’s proposed form also improperly narrows the claims. For example, Google instructs
13 jurors that they cannot find Google’s Payments Policy to be unlawful under Plaintiffs’ Section 1 claims
14 “[i]f you did not find the Payments Policy to be unlawful when you considered plaintiffs’ Section 2
15 claims”. That is wrong: the jury may properly find a Section 1 tying violation without finding that
16 Google engaged in illegal monopolization. *See, e.g., Eastman Kodak Co. v. Image Tech. Servs., Inc.*,
17 504 U.S. 451, 481 (1992) (“Monopoly power under § 2 requires, of course, something greater than
18 market power under § 1.”). Google also entirely omits Plaintiffs’ *per se* tying claim.

19 The Court should therefore reject Google’s proposed special jury findings. *See Floyd v. Laws*,
20 929 F.2d 1390, 1396 (9th Cir. 1991) (“[T]he [trial] court has complete discretion over whether to have
21 the jury return a special verdict or a general verdict.”). Courts have used general verdict forms like
22 Plaintiffs’ proposed form in antitrust jury trials. *See Verdict Sheet, Angiodynamics, Inc. v. C.R. Bard,*
23 *Inc.*, No. 17-cv-00598-BKS-CFH, Dkt. No. 474 (N.D.N.Y. Oct. 6, 2022). If, however, the Court
24 requests that the jury deliver special findings as proposed by Google, Google’s form contains
25 numerous other legal errors that cannot be addressed in these two pages. Plaintiffs therefore
26 respectfully request an opportunity to address these other errors if the Court decides to use a special
27 verdict form according to the structure proposed by Google.

Defendants' Argument Re Verdict Form

Both sides agree that the jury should return specific findings rather than render a general verdict. But Plaintiffs' verdict form does not ask the jury to answer the specific questions that the Supreme Court and the Ninth Circuit have instructed must be answered before finding liability in an antitrust case. Plaintiffs' form is incomplete, confusing, and would impede review.

A verdict form must be "adequate to obtain a jury determination of the factual issues essential to judgment." *Mateyko v. Felix*, 924 F.2d 824, 827 (9th Cir. 1990); *Saman v. Robbins*, 173 F.3d 1150, 1155 (9th Cir. 1999). Courts should "submit questions or interrogatories covering all the issues raised by the pleadings," "especially when requested [] to do [so.]" *Tillman v. Great Am. Indem. Co. of N.Y.*, 207 F.2d 588, 593 (7th Cir. 1953). Courts frequently opt for detailed forms in antitrust cases. *E.g.*, *MCI Commc'ns Corp. v. Am. Tel. and Tel. Co.*, 708 F.2d 1081, 1093 (7th Cir. 1983) (upholding "special verdict form [that] required the jury to make a separate finding of liability as to each of the fifteen charges"); *Sidibe v. Sutter Health*, No. 3:12-cv-04584-LB, ECF No. 1530 (N.D. Cal. Mar. 11, 2022) (verdict form asking for element-by-element factual findings in antitrust case); *In re: HIV Antitrust Litig.*, No. 3:19-cv-02573-EMC, ECF No. 2057 (N.D. Cal. June 30, 2023) (same); *Costco v. Au Optronics*, No. 2:13-cv-01207-RAJ, ECF No. 628 (W.D. Wash. Oct. 23, 2014) (same).

Plaintiffs' form improperly permits the jury to find liability without answering predicate questions for liability recognized by Supreme Court and Ninth Circuit precedent. For example, "[a] threshold step in any antitrust case is to accurately define the relevant market." *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020). Google's verdict form asks a threshold question about the relevant market, but Plaintiffs' form does not. Similarly, the Ninth Circuit has identified a "three-part burden-shifting test under the rule of reason," *id.* at 991, but Plaintiffs' verdict form collapses all three parts into a single question—along with the issue of market definition and monopoly power. The form accordingly does not ensure that the jury will evaluate all "factual issues essential to judgment."

In addition, Plaintiffs' form will confuse the jury. In Plaintiffs' words, the case involves a "complicated web of anticompetitive contractual and technological restrictions" spanning more than a decade against the background of a complicated legal framework. 3:21-md-02981-JD, ECF No. 548, at 2, 7. But Plaintiffs' vague form will leave the jury to sort through hundreds of pages of jury instructions

1 and match those instructions to Plaintiffs’ ill-defined questions on their own. Google’s form, on the
2 other hand, disentangles the “web” guides the jury through the required analysis in a way that comports
3 with the jury instructions.

4 Further, by lumping together all of the issues and elements of Plaintiffs’ antitrust claims,
5 Plaintiffs’ verdict form will obscure the jury’s findings in ways that will impede appellate review. “[I]n
6 large and complex cases such as this, involving many novel legal issues, the better practice would [be]
7 to require special verdicts or the submission of interrogatories to the jury pursuant to Fed. R. Civ. P. 49.
8 ” *Pac. W. Cable Co. v. City of Sacramento*, 672 F. Supp. 1322, 1326-27 (E.D. Cal. 1987). If this case
9 is reviewed, “the already difficult task of reviewing a case of this magnitude [will be] eased” if the court
10 “kn[ows] precisely what the jury’s findings [are] on several specific factual issues.” *Id.* Plaintiffs’ form
11 will preclude any understanding of the jury’s findings on particular and potentially dispositive issues
12 such as the relevant product market—which was decisive in *Ohio v. Am. Express Co.*, 138 S. Ct. 2274,
13 2284 (2018)—or the lack of substantially less restrictive alternatives to the challenged conduct—which
14 was important to the Ninth Circuit’s decision in *Epic v. Apple*, 67 F.4th 946 (9th Cir. 2023).

15 Plaintiffs asserted that Google’s form improperly suggested that jurors must be unanimous on
16 the elements of the claim. But Courts regularly require unanimity for all questions on a verdict
17 form. *E.g. In re Capacitors Antitrust Litig.*, No. 3:17-cv-07046-JD, ECF No. 381 (N.D. Cal. May 22,
18 2023); *U.S. Airways, Inc. v. Sabre Holdings, Corp.*, 1:11-cv-02725, ECF No. 1208 (S.D.N.Y. May 19,
19 2022). Plaintiffs have not shown any reason to depart from that practice here.

20 Finally, Plaintiffs’ verdict form suggests that the jury should not reach Google’s contract-based
21 counterclaims if it finds in favor of Plaintiffs on any of their antitrust claims. That is not the law. *Kelly*
22 *v. Kosuga*, 358 U.S. 516, 520 (1959); *Hemlock Semiconductor Operations, LLC v. SolarWorld Indus.*
23 *Sachsen GmbH*, 867 F.3d 692, 699-700 (6th Cir. 2017).

1 DATED: October 16, 2023

CRAVATH, SWAINE & MOORE LLP
Christine Varney (*pro hac vice*)
Gary A. Bornstein (*pro hac vice*)
Timothy G. Cameron (*pro hac vice*)
Yonatan Even (*pro hac vice*)
Lauren A. Moskowitz (*pro hac vice*)
Justin C. Clarke (*pro hac vice*)
Michael J. Zaken (*pro hac vice*)
M. Brent Byars (*pro hac vice*)

6 FAEGRE DRINKER BIDDLE & REATH LLP
Paul J. Riehle (SBN 115199)

8 Respectfully submitted,

9 By: s/ Gary A. Bornstein
Gary A. Bornstein

10 *Counsel for Plaintiff Epic Games, Inc.*

11 DATED: October 16, 2023

HUESTON HENNIGAN LLP
Douglas J. Dixon
Christine Woodin
Joseph A. Reiter

14 Respectfully submitted,

15 By: s/ Douglas J. Dixon
Douglas J. Dixon

16 *Counsel for Plaintiffs Match Group, LLC et al.*

18 DATED: October 16, 2023

MUNGER, TOLLES & OLSON LLP

20 By: s/ Glenn D. Pomerantz

Glenn D. Pomerantz

21 *Attorneys for Defendants Google LLC et al.*

24 DATED: October 16, 2023

MORGAN, LEWIS & BOCKIUS LLP

26 By: s/ Brian C. Rocca

Brian C. Rocca

27 *Attorneys for Defendants Google LLC et al.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILING ATTESTATION

I, Rebecca L. Sciarrino, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(h)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

s/ Rebecca L. Sciarrino
Rebecca L. Sciarrino