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24 **UNITED STATES DISTRICT COURT**  
25 **NORTHERN DISTRICT OF CALIFORNIA**

26 JOHN PISTACCHIO, individually and on  
27 behalf of all others similarly situated,

28 Plaintiff,

v.

APPLE INC., a California corporation.

Defendants.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

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1 Plaintiff John Pistacchio (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, asserts the following against Defendant Apple Inc. (“Apple” or “Defendant”) based upon  
3 personal knowledge, where applicable, information and belief, and the investigation of counsel.

4 **NATURE OF THE ACTION**

5 1. Video games achieved mainstream popularity in the 1970’s and have remained  
6 popular ever since, ultimately evolving into a multi-billion-dollar industry expected to generate  
7 \$159.3 billion in revenue in 2020 alone.

8 2. One segment of the industry is mobile gaming. Mobile gaming has grown into one  
9 of the largest segments of the gaming market, generating about \$49 billion in revenue in 2019,  
10 approximately 60% of the revenue for the global video game market that year. In 2020, mobile  
11 gaming grew exponentially as an increasing number of people became confined to their homes due  
12 to shelter-in-place orders as a result of the COVID-19 pandemic. For example, in the first quarter  
13 of 2020, more than 3 billion games were installed on devices running Apple “iOS,” the operating  
14 system that powers Apple’s smartphones and tablets, including the iPhone and iPad.

15 3. Seeking to further monetize the mobile gaming industry, multiple companies have  
16 developed subscription-based mobile gaming services. These services allow subscribers to access  
17 game titles across multiple devices, including smartphones and tablets, for a single monthly fee.

18 4. One subscription-based mobile gaming service is “Apple Arcade.” Apple launched  
19 Apple Arcade in September 2019, which is projected to have 12 million subscribers by the end of  
20 2020. Shortly thereafter, Microsoft, Facebook, and others launched competing subscription-based  
21 mobile gaming services.

22 5. Apple acted quickly to monopolize the market for iOS subscription-based mobile  
23 gaming services through a series of anti-competitive acts, including preventing Microsoft and  
24 Facebook from offering their services through the Apple “App Store,” the only place where iOS  
25 users can access competing subscription-based mobile gaming services.

26 6. In doing so, Apple has foreclosed competition in the iOS subscription-based mobile  
27 gaming services market. As the self-appointed sole provider of subscription-based mobile gaming  
28 services on iOS, Apple possesses monopoly power in the relevant market. There are no pro-

1 competitive justifications for excluding other subscription-based mobile gaming services from the  
2 market or any of Apple's other misconduct, as described herein.

3 7. Plaintiff is a subscriber to Apple Arcade and pays Apple a recurring subscription  
4 charge for access to gaming content. As a direct result of Apple's anticompetitive conduct, Plaintiff  
5 has been forced to pay supracompetitive prices for Apple Arcade. Moreover, by unlawfully  
6 foreclosing competition, Apple has eliminated consumer choice, stymied innovation, and reduced  
7 quality of service. Given the persistent, pervasive, and secretive nature of Apple's misconduct,  
8 Plaintiff believes that further evidentiary support for his claims will be unearthed after a reasonable  
9 opportunity for discovery.

10 **JURISDICTION AND VENUE**

11 8. The Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337.  
12 This case arises under Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1, 2, and Sections  
13 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26.

14 9. The Court also has jurisdiction over the subject matter of this action pursuant to 28  
15 U.S.C §1332(d), because the amount in controversy for the Class exceeds \$5,000,000 exclusive of  
16 interest and costs, there are more than 100 putative class members, and minimal diversity exists  
17 because a significant portion of putative class members are citizens of a state different from the  
18 citizenship of Defendant.

19 10. The Court also has supplemental jurisdiction over Plaintiff's state law claims under  
20 28 U.S.C. § 1337.

21 11. This Court has general personal jurisdiction over Defendant because Defendant is  
22 incorporated in California and has its principal place of business located in Cupertino, California in  
23 this District. Additionally, Defendant is subject to specific personal jurisdiction in this State because  
24 a substantial part of the events and conduct giving rise to Plaintiff's claims occurred in this State.

25 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial  
26 portion of the conduct described in this Complaint was carried out in this District. Furthermore,  
27 Defendant is headquartered in this District and subject to personal jurisdiction in this District.  
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**INTRADISTRICT ASSIGNMENT**

13. Pursuant to Civil Local Rule 3-2(c), this antitrust case shall not be assigned to a particular Division of this District, but shall be assigned on a District-wide basis.

**PARTIES**

**A. Plaintiff**

14. Plaintiff John Pistacchio (“Plaintiff”) is a natural person and citizen of the State of New Jersey and a resident of Essex County. Plaintiff is the owner of an Apple iPhone. On March 21, 2020, Plaintiff paid \$4.99 to subscribe to Apple Arcade. Plaintiff has continued to pay \$4.99 per month from March 21, 2020 through present.

15. As a result of Apple’s misconduct, as alleged herein, Plaintiff has suffered and will continue to suffer injury, including monetary losses as a result of paying supracompetitive subscription prices for Apple Arcade.

16. Plaintiff has also been harmed as a result of limited choice, stymied innovation, and reduction of quality of service associated with subscription-based mobile gaming services on iOS as a result of Apple’s anticompetitive conduct.

**B. Defendant**

17. Defendant Apple Inc. is a California corporation, organized and existing under the laws of the State of California, with its principal place of business at One Apple Park Way, Cupertino, CA 95014.

18. Apple is the largest public company in the world, with a current market capitalization of close to \$2 trillion. Apple designs, markets and sells smartphones (including the iPhone), personal computers (including Macs), tablets (including the iPad), wearables and accessories, and sells a variety of related services, including Apple Arcade, Apple’s gaming subscription service. Apple also owns and operates the App Store including contracting with all app developers that distribute their apps through the App Store.

1 **SUBSTANTIVE ALLEGATIONS**

2 **I. The History of Apple Inc. and the App Store**

3 19. Since the turn of the century, Apple has grown into the largest company by market  
4 capitalization in the world. Since 2013, the company has held a spot among the top ten Fortune 500  
5 companies. In 2018, Apple became the first American company to exceed \$1 trillion in market  
6 capitalization. Two years later, Apple is now worth nearly \$2 trillion.

7 20. Apple's most popular product is its iPhone. Apple announced the release of the  
8 iPhone in 2007. The iPhone is a smartphone that has the functionality to perform an array of  
9 activities, such as listen to music, video chat, check the weather, and browse the internet, among  
10 other things. Within a year, the iPhone's popularity made Apple the third-largest supplier of mobile  
11 handsets in the world. Apple recently released the iPhone 11 Pro, which it dubs "the world's most  
12 powerful personal device" that "pushes the boundaries of what a smartphone can do."<sup>1</sup> To date,  
13 Apple reportedly sells more than 200 million iPhones annually and there are over one billion active  
14 iPhone users.

15 21. Apple's iPhone, like all smartphones, requires an operating system or "OS" to  
16 support its functionality. All iPhones run on Apple's proprietary OS called iOS. Apple also  
17 manufactures a number of other devices, including tablets such as the iPad, which also run iOS.  
18 Collectively, these are referred to as iOS devices.

19 22. Apple's iOS devices come pre-loaded with certain apps made exclusively by Apple.  
20 Apple's pre-installed apps include a clock, weather, picture, GPS map, and web browsing app,  
21 among others.

22 23. However, users desire more than the apps that Apple pre-installs. For these reasons,  
23 just a year after launching the iPhone, in 2008, Apple released the App Store—a digital marketplace  
24 which allows third-party programmers to sell their apps for the iPhone and other Apple iOS devices,  
25 such as the iPad. Users can download an app for virtually anything, from money management to  
26 food diaries, and everything in between.

27 \_\_\_\_\_  
28 <sup>1</sup> *iPhone 11 Pro*, APPLE, <https://www.apple.com/iphone-11-pro/> (last visited Aug. 17, 2020).

1           24.     While some apps are available for free, other apps cost money to download. To date,  
2 the App Store offers approximately 2 million apps available for download.

3           25.     The App Store allows app developers to cater to a massive worldwide market. Today,  
4 over 20 million registered developers sell their work through the App Store, which is visited by 500  
5 million consumers a week.

6           26.     The iOS userbase is enormous. There are nearly one billion iPhone users worldwide  
7 and over 1.5 billion active iOS devices, including both iPhones and iPads. Typically, these users  
8 will use only iOS devices and will not also use mobile devices with a different OS.

9           27.     The App Store makes up a significant portion of Apple’s “services” business. In  
10 2017, Tim Cook, CEO of Apple, announced a plan to double the size of its services business by the  
11 end of 2020. Apple met that goal by July of this year. Apple has continued to focus on growing its  
12 services business as a way to boost revenue as hardware sales decline. To date, Apple’s services  
13 account for 18% of its total revenue and grows at a much faster pace than its products business.  
14 Since 2017, Apple’s services revenue has increased more than 41%.

15           28.     With respect to the App Store specifically, Apple is projected to net over \$17 billion  
16 for fiscal year 2020. Phillip Shoemaker, the former director of app review for the App Store,  
17 estimates that it costs Apple less than \$100 million to operate the App Store.

18           29.     Mobile gaming services in particular have contributed significantly to Apple’s  
19 success in its services business. In fact, the most important segment of the App Store is gaming  
20 apps. As reported by the *New York Times*, “games are the largest source of revenue for Apple on the  
21 App Store.”<sup>2</sup>

## 22 **II.     The Rise of Mobile Gaming**

23           30.     The mobile gaming industry began with the release of a mobile version of the popular  
24 arcade game *Tetris*, which came pre-installed on the Hagenuk cellphone launched in 1994.

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28 <sup>2</sup> Seth Schiesel, *Facebook Gaming Finally Clears Apple Hurdle, Arriving in App Store*, NEW YORK TIMES (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html?auth=login-email&login=email>.



1           31.     While a handful of humble mobile games were sold on mobile phones during the late  
2 1990's and early 2000's, the segment remained small until 2008, as compared to traditional  
3 computer and console gaming.

4           32.     Apple's release of the App Store heralded a new era in mobile gaming. Through the  
5 App Store, mobile game developers could sell their games to consumers, rather than being forced  
6 to first sell their games to phone carriers as they had in the past.

7           33.     With the rise of smartphones, mobile games have grown immensely popular. By  
8 2011, the number of consumers purchasing mobile games in the United States alone was 80.7  
9 million. Over the past decade, that number has almost tripled.

10          34.     One of the first mobile games to gain noteworthy commercial success was the game  
11 *Angry Birds*, originally released exclusively on the App Store in 2009. The popularity of this game  
12 led to the development of a multimedia franchise, including sequel games, several toy lines, multiple  
13 movies, and a children's TV series.

14          35.     Mobile games produce substantially more revenue than other kinds of apps because  
15 consumers are more willing to pay to download mobile games and they are more willing to make  
16 in-app purchases. Today, mobile gaming represents a multi-billion-dollar industry. In 2018, mobile  
17 gaming generated approximately \$75 billion in revenue worldwide. This is expected to increase by  
18 more than \$77 billion in revenue by the end of 2020.

19          36.     Apple has touted its App Store as "the world's most successful and vibrant gaming  
20 platform."<sup>3</sup> Today, over 900,000 mobile games are available on the App Store. Over 80% of revenue  
21 for apps on the App Store comes from mobile games. Indeed, of the \$62 billion spent on smartphone  
22 gaming in 2019, more than half occurred on Apple devices.

23          37.     Given the popularity of mobile gaming, multiple companies developed subscription-  
24 based mobile gaming services designed to run on iOS. As explained herein, Apple blocked its  
25 competitors from launching these products, which would compete with Apple Arcade.

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28 <sup>3</sup> Press Release, *Apple introduces Apple Arcade – the World's First Game Subscription Service for Mobile, Desktop and the Living Room*, BUSINESS WIRE, (March 25, 2019), <https://apnews.com/press-release/pr-businesswire/caedc8e9d09d46498c390cfc0b08c14f>.

1 **III. The Rise of Mobile Gaming Subscription Services**

2 38. Subscription services have gained significant traction among consumers.  
3 Subscription services enable users to access a library of entertainment or products, such as music,  
4 movies, TV shows, or clothes, in exchange for a monthly fee.

5 39. As with other subscription services, subscription-based mobile gaming services  
6 charge a recurring fee to users in exchange for access to that service’s library of games.  
7 Subscription-based mobile gaming services offer players the ability to play games, create and stream  
8 gaming content, connect to gaming communities, and more across many devices.

9 40. Subscription-based mobile gaming services are beneficial to both gaming publishers  
10 and consumers. For publishers, subscription-based mobile gaming services have the advantage of a  
11 steady revenue stream.

12 41. Consumers also stand to benefit greatly from subscription-based mobile gaming  
13 services. Rather than being chained to bulky gaming consoles at home, consumers can pay one fee  
14 to play a myriad of games across devices through a subscription service. Should they choose,  
15 consumers can pay for more than one subscription service in order to have access to multiple gaming  
16 libraries. Moreover, the steady revenue stream provides resources to update current games and  
17 develop new games, expanding consumer choice and increasing game quality.

18 42. Recognizing these benefits, in March 2019, Apple announced that it would launch  
19 Apple Arcade, it’s subscription-based mobile gaming service.

20 43. Apple Arcade launched on September 19, 2019. Apple Arcade costs \$4.99 per  
21 month, which includes unlimited access to a wide variety of gaming content. Users also have the  
22 option of Family Share, which allows up to six family members to access Apple Arcade as part of  
23 the same monthly subscription.

24 44. Once users subscribe to Apple Arcade, they are able to download Apple Arcade  
25 games from the App Store directly to their devices and access them at any time, including offline.  
26 There are no advertisements and no in-app purchases. Apple Arcade games cannot be purchased  
27 individually without the subscription.  
28

1           45.     At the time of launch, Apple Arcade offered 100 new games available on Apple  
2 devices, including the iPhone, iPad, iPod touch, Mac, and Apple TV. Apple Arcade games feature  
3 cross-save, so that if a user switches from one Apple device to another in the middle of a game, the  
4 user's progress will be saved.

5           46.     Following the release of Apple Arcade, other companies, including Google,  
6 Facebook, and Microsoft, developed similar subscription-based mobile gaming services compatible  
7 with iOS. For example, on November 19, 2019, Google launched its subscription-based mobile  
8 gaming service, Stadia.

9           47.     At launch, Stadia featured 30 games. Stadia offers two subscription tiers. A free tier  
10 that offers game playing and streaming at a lower resolution. The other is a paid tier in which, for  
11 \$9.99 a month, users can access Stadia games across multiple devices, including laptops, tablets and  
12 smartphone.

13           48.     However, iOS users cannot utilize this feature. While iOS users can download the  
14 Stadia app from the App Store to manage Stadia on other devices, Apple blocked users from being  
15 able to play games on iOS claiming that Stadia violated the App Store Review Guidelines.

16           49.     Apple has confirmed that it would not allow the full version of Google Stadia app on  
17 the App Store.

18           50.     On April 20, 2020, Facebook launched its own subscription-based mobile gaming  
19 service, Facebook Gaming. Like Apple Arcade, Facebook Gaming costs \$4.99 per month and  
20 includes games for users to play. Thus, Facebook Gaming competes directly with Apple Arcade for  
21 users to subscribe to their subscription-based mobile gaming platform.

22           51.     Like Stadia, Apple denied Facebook Gaming access to the App Store, until Facebook  
23 agreed to strip the game-playing feature entirely from the iOS version of its app. Facebook Gaming  
24 only became available to iOS users in August 2020—four months after its initial launch and stripped  
25 of the very feature that threatened Apple Arcade.

26           52.     Microsoft also developed its own subscription-based mobile gaming service and  
27 began beta testing for an iOS compatible version, Project xCloud, on August 5, 2020. Microsoft was  
28 ultimately forced to abandon this project when Apple refused to allow xCloud in the App Store. A

1 Microsoft spokesperson announced “we do not have a path to bring our vision of cloud gaming with  
2 Xbox Game Pass Ultimate to gamers on iOS via the Apple App Store. *Apple stands alone as the*  
3 *only general purpose platform to deny consumers from cloud gaming and game subscription*  
4 *services* like Xbox Game Pass.”<sup>4</sup>

5 53. Every other attempt to develop competing subscription-based mobile gaming  
6 services, including Nvidia’s GeForce Now, has equally been blocked. Like others, these  
7 subscription-based mobile gaming services were either rejected entirely or forced to remove key  
8 features.

9 54. Thus, while more game titles are available for consumers to access on more devices  
10 than ever before, “for the more than 1 billion users of Apple’s iPhone and iPad, the only real option  
11 is [Apple] Arcade.”<sup>5</sup>

12 55. Apple excludes any subscription-based mobile gaming service that has the potential  
13 of competing with Apple Arcade. By foreclosing all competition, Apple has extinguished Plaintiff’s  
14 and the Class’s freedom to choose between subscription services, caused reduced innovation and  
15 quality of service, and caused Plaintiff and the Class to pay more for Apple Arcade than they  
16 otherwise would have in a competitive market.

#### 17 **IV. The Relevant Market**

18 56. The relevant market is the market for subscription-based mobile gaming services on  
19 iOS devices (the “iOS Subscription-Based Mobile Gaming Services Market”). This market is  
20 comprised of a single distribution channel, the App Store, which is the only way that iOS users may  
21 access subscription-based mobile gaming services.

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25 <sup>4</sup> Nick Statt, *Apple confirms cloud gaming services like xCloud and Stadia violate App Store*  
26 *guidelines*, The Verge (Aug. 6, 2020), <https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations>.

27 <sup>5</sup> Mark Gurman, *Apple’s App Store Rules Limit Rival Gaming Services While Arcade Runs Free*,  
28 BLOOMBERG, (March 25, 2020), <https://www.bloomberg.com/news/articles/2020-03-25/google-stadia-nvidia-geforce-microsoft-xcloud-not-on-apple-ios>.

1           57.     Although Apple Arcade is available for iOS users in 175 countries and regions across  
2 the globe, the geographic scope is limited to the United States.<sup>6</sup>

3  
4     **V.     Apple’s Monopoly Power in the iOS Subscription-Based Mobile Gaming Services Market**

5           58.     Apple has monopoly power in the iOS Subscription-Based Mobile Gaming Services  
6 Market. This is because the App Store is the sole means by which subscription-based mobile gaming  
7 services are distributed to consumers in the market, *i.e.*, iOS device users.

8           59.     As the “gatekeeper” of the “walled garden” that is the App Store, Apple exercises  
9 complete control over the App Store. Developers seeking to distribute their apps on the App Store  
10 are required to follow Apple’s stringent App Store Review Guidelines (“Guidelines”) or risk Apple  
11 rejecting or removing their app from the App Store.

12           60.     No developer can distribute their subscription-based mobile gaming services to iOS  
13 users unless they agree to distribute their apps solely through the App Store and not to distribute  
14 third-party app stores. Moreover, Apple pre-installs its App Store on every iOS device it sells and  
15 disables iOS users’ ability to remove the App Store from their devices. In other words, for a  
16 developer to distribute a subscription-based gaming services to iOS consumers, it must go through  
17 the App Store; to access the App Store, it must go through Apple.

18           61.     Further, there are no constraints on Apple’s market power in the relevant market.  
19 Non-iOS subscription-based mobile gaming services do not constrain Apple’s market power  
20 because they are not compatible with iOS devices, they cannot provide iOS users with apps for their  
21 devices, and they do not contain iOS compatible apps.

22           62.     App developers and publishers are likewise powerless to constrain Apple’s conduct  
23 by refusing to develop and publish apps for iOS. There are at least 1 billion gaming iOS users. If a  
24 developer does not develop iOS apps, the developer forfeits all 1 billion of those customers. No

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26 \_\_\_\_\_  
27 <sup>6</sup> A complete list of countries where Apple Arcade is available is attached hereto as Exhibit A. *See*  
28 *also* “Availability of Apple Media Services”, APPLE, <https://support.apple.com/en-us/HT204411>  
(last visited Sep. 11, 2020).

1 developer or group of developers have sufficient power to entice enough iOS users to leave iOS,  
2 such that developing apps solely for other platforms would be profitable.

3 63. Indeed, developers are “acutely aware of [Apple’s] power over [them].”<sup>7</sup> Explaining  
4 Facebook’s decision to strip Facebook Gaming of its game-playing feature in order to gain access  
5 to the App Store, Facebook’s Chief Operating Officer Sheryl Sandberg stated, “Facebook couldn’t  
6 afford to ignore 50 percent of the smartphone market, not to mention iPad OS and the tablet-related  
7 market.”<sup>8</sup> Put simply, developers cannot forgo iOS.

8 64. If subscription-based mobile gaming service providers—like Microsoft, Facebook,  
9 and Google—cannot constrain Apple’s market power, consumers are even more powerless to do so.  
10 Consumers that purchase an iOS device are locked into the iOS ecosystem and face substantial  
11 switching costs. If they want to switch OS, they must switch devices. Additionally, mobile OSs have  
12 different designs, controls, and functions that consumers must learn to navigate. Learning to use a  
13 different mobile OS is part of consumers’ switching costs. Thus, users are unlikely to switch to  
14 another OS in order to access subscription-based mobile gaming content from other providers

15 65. The loss of financial investment in various iOS devices and apps further deters users  
16 from switching OSs. Consumers often use one OS across their devices. That is, an iPhone user  
17 typically uses a Mac computer, an iPad, and/or an iPod, *i.e.*, all Apple devices. These devices feature  
18 the same types of designs, controls, and functions and typically sync with each other. If a user enters  
19 a date in the calendar on their Mac computer, the date is also entered into the calendar on their  
20 iPhone. Moreover, because apps are designed to operate on a specific OS, switching to a new mobile  
21 OS may mean losing access to iOS specific products and data.

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25 <sup>7</sup> Dominic Whitlock, Match Group Welcomes EU’s Probe Into Apple Commission Rates, GLOBAL  
26 DATING INSIGHTS (Jun. 17, 2020), <https://www.globaldatinginsights.com/news/match-group-welcomes-eus-probe-into-apple-commission-rates/>.

27 <sup>8</sup> John P. Mello Jr., *Apple, Microsoft, Facebook Rumble Over Game Streaming Apps*, TECH NEWS  
28 WORLD (Aug. 11, 2020), <https://www.technewsworld.com/story/86797.html#:~:text=Late%20last%20week%2C%20Apple%20refused,streaming%20gaming%2C%20into%20the%20store.>

1 **VI. Apple’s Anticompetitive Conduct in the iOS Subscription-Based Mobile Gaming**  
2 **Services Market**

3 66. Apple imposes unreasonable restraints and willfully and unlawfully maintains its  
4 monopoly in the market for iOS Subscription-Based Mobile Gaming Services through several,  
5 related anticompetitive acts designed to exclude subscription-based mobile gaming services that  
6 compete with Apple Arcade. There are no procompetitive justifications for Apple’s anti-competitive  
7 acts.

8 67. Apple’s unlawful conduct proximately caused injury and actual damages to Plaintiff  
9 and the Class.

10 **A. Apple Imposes Technical Restrictions on iOS Devices.**

11 68. Apple imposes technical restrictions that prevent iOS users from accessing  
12 subscription-based mobile gaming services other than Apple Arcade. By preventing iOS users  
13 access to any other app stores, Apple is able to maintain its “ironclad” control of the sole channel  
14 for distribution of subscription-based mobile gaming content. Complete control of the App Store  
15 therefore not only furthers but is *essential* to Apple’s scheme to maintain its monopoly in the  
16 relevant market.

17 69. First, Apple designed technical restrictions into iOS that prevent users from  
18 downloading app stores or apps directly from websites. Consequently, developers of subscription-  
19 based mobile gaming services must distribute apps through the App Store and consumers must use  
20 the App Store to download these apps to their iOS devices. There is no alternative.

21 70. Second, Apple pre-installs the App Store on the home screen of every iOS device it  
22 sells and disables users’ ability to uninstall the App Store. Apple does not permit any other app  
23 stores on iOS devices.

24 **B. Apple Imposes Contractual Restrictions on Developers.**

25 71. Apple also imposes contractual restrictions on developers that further its monopoly  
26 in the market for iOS Subscription-Based Mobile Gaming Services.

27 72. First, in order to distribute subscription-based mobile gaming services to iOS  
28 consumers, all developers must agree to distribute their apps solely through the App Store.

1           73. Section 3.2(g) of the Developer Agreement provides that apps “may be distributed  
2 only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App  
3 Distribution, for beta distribution through TestFlight, or through Ad Hoc distribution as  
4 contemplated in this Agreement[.]”<sup>9</sup> This provision ensures that the App Store is the only channel  
5 through which developers can distribute subscription-based mobile gaming services to the more  
6 than 1 billion person iOS userbase.

7           74. Custom App Distribution, beta distribution through TestFlight, and Ad Hoc  
8 distribution are limited distribution channels that do not compete with the App Store.

9           75. Custom App Distribution is the “store or storefront functionality that enables users  
10 to obtain Licensed Applications through the use of Apple Business Manager, Apple School  
11 Manager, or as otherwise permitted by Apple[.]”<sup>10</sup> Apple Business Manager and Apple School  
12 Manager are specialized programs that allow organizations to buy and distribute apps and content  
13 in bulk to their members or employees, and then manage their devices, apps, and accounts. Custom  
14 App Distribution does not allow developers to distribute subscription-based mobile gaming services  
15 to the general iOS userbase.

16           76. Apple’s beta testing program permits a developer to distribute non-final versions of  
17 apps, including subscription-based mobile gaming services, only to the developer’s own personnel  
18 and beta testers for the sole purpose of coding and testing an app for use on the App Store. This  
19 program also does not allow developers to distribute apps to the general iOS userbase, and therefore  
20 does not compete with the App Store as a distribution channel.

21           77. Ad Hoc distribution allows developers to distribute apps directly to the developer’s  
22 own devices to facilitate development of apps for iOS. Ad Hoc distribution does not allow  
23 distribution to third parties. Ad Hoc distribution therefore does not allow distribution to the general  
24 iOS userbase and is not a competing distribution channel.

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27 <sup>9</sup> *Apple Developer Agreement*, APPLE, (last visited Oct. 7, 2020),  
28 <https://developer.apple.com/terms/apple-developer-agreement/>.

<sup>10</sup> *Id.*



1           78.     Second, Apple prohibits developers from distributing their own, third-party app  
2 stores, as a way to prevent competition against its own subscription-based mobile gaming service.  
3 Section 3.3.2(b) of the Developer Agreement prohibits “Application[s]” that “create a store or  
4 storefront for other code or applications[.]”

5           79.     Apple also requires developers to follow its App Store Review Guidelines or risk  
6 removal of their apps from the App Store. Under the Guidelines, it is “[u]nacceptable” to create “an  
7 interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a  
8 general-interest collection.”<sup>11</sup>

9           80.     Developers are therefore contractually bound to distribute apps, including  
10 subscription-based mobile gaming services, only through the App Store. They cannot sidestep the  
11 App Store by offering their services through other app stores. They cannot sidestep the App Store  
12 by creating and distributing their own subscription-based mobile gaming services through other app  
13 stores. And they cannot sidestep the App Store by offering their services through any subscription-  
14 based mobile gaming services not on the App Store.

15           81.     Apple therefore further forecloses competition in the market for iOS Subscription-  
16 Based Mobile Gaming Services by preventing developers from distributing their gaming content,  
17 including subscription-based gaming content, anywhere but the App Store.

18  
19           **C.     Apple Abuses its App Store Review Guidelines in order to Protect its Monopoly  
20 in the Market for iOS Subscription-Based Mobile Gaming Services.**

21           82.     As explained above, any developer or publisher seeking to distribute an app through  
22 the App Store must follow Apple’s stringent App Store Review Guidelines. Apple uses its  
23 Guidelines strategically to exclude rival subscription-based mobile gaming services.

24           83.     Apple’s Guidelines provide that Apple, in its sole discretion, can create new rules, at  
25 any time, for any reason. For example, Apple’s introduction to its Guidelines state that Apple can  
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28 <sup>11</sup> *App Store Review Guidelines*, APPLE, (last visited Oct. 7, 2020), <https://developer.apple.com/app-store/review/guidelines/>.

1 “reject apps for any content or behavior that we believe is over the line. What line, you ask? Well  
2 as a Supreme Court Justice once said, ‘I’ll know it when I see it.’”<sup>12</sup>

3 84. Apple has arbitrarily applied its guidelines to exclude apps that compete with Apple’s  
4 own apps and services. Phillip Shoemaker, former Senior Director of App Store Review, explained  
5 in an interview with congressional officials that Apple’s senior executives would routinely find  
6 “pretextual reasons” to remove apps from the App Store, “particularly when those apps competed  
7 with Apple services.”<sup>13</sup> Mr. Shoemaker further explained that apps that compete with Apple’s  
8 services have a “track record” of facing difficulty in getting through the App Store review process.<sup>14</sup>  
9 Mr. Shoemaker admitted that this process gives Apple an unfair “advantage[] . . . over third-party  
10 apps.”<sup>15</sup>

11 85. This is especially true in the market for subscription-based mobile gaming services.  
12 Mr. Shoemaker specifically cited Apple Arcade as a primary example of Apple abusing its App  
13 Store Review Guidelines. Specifically, Mr. Shoemaker explained that even though Apple Arcade  
14 was a type of app “consistently disallowed from the store” when created by third-party developers,  
15 it was a welcome addition to the App Store despite that it violated existing guidelines.<sup>16</sup> Even more  
16 so, Mr. Shoemaker explained that Apple’s latest guidelines were rewritten “specifically [to] exclude  
17 Google Stadia,” a rival to Apple Arcade.<sup>17</sup>

18 86. The Guidelines also include specific provisions that block subscription-based mobile  
19 gaming services in particular.

20 87. For example, Guideline 4.7 permits gaming apps only if, *inter alia*, “code distribution  
21 isn’t the main purpose of the app, the code is not offered in a store or store-like interface, and  
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23 <sup>12</sup> *Id.*

24 <sup>13</sup> INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND  
25 RECOMMENDATIONS, SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW OF  
THE COMMITTEE ON THE JUDICIARY AT 367 (2020).

26 <sup>14</sup> *Id.* at 371.

27 <sup>15</sup> *Id.*

28 <sup>16</sup> *Id.*

<sup>17</sup> *Id.*

1 provided that the software [] is free or purchased using in-app purchase.”<sup>18</sup> In other words, if an app  
2 is anything more than a standalone game, such as a subscription-based mobile gaming service,  
3 Apple prohibits the app.

4 88. Apple relied on this provision to deny Facebook Gaming access to the App Store.  
5 Apple only allowed Facebook Gaming to launch after it stripped the game-playing feature from its  
6 app.

7 89. As another example, Apple’s Guidelines ensure that Apple Arcade subscribers enjoy  
8 a more seamless and user-friendly experience than they would if using a competing subscription-  
9 based mobile gaming service. Guideline 3.1.2(a) provides that, “[g]ames offered in a streaming  
10 game service subscription must be downloaded directly from the App Store[.]”<sup>19</sup> That is, each game  
11 in a competing subscription-based mobile gaming service must be available for download as a  
12 separate app in the App Store. Consequently, while an Apple Arcade subscriber can navigate to the  
13 “Apple Arcade” section of the App Store and peruse and download all available games; a consumer  
14 subscribing to a competing service (if Apple had approved any such service for the App Store)  
15 would need to navigate the App Store themselves, without any convenient listing, and locate each  
16 individual game whenever they want to download a new game.

17 90. Apple claims that this policy is necessary in order to allow Apple to review each  
18 game offered in its App Store for safety and privacy. Apple cited Microsoft’s catalog listing as the  
19 very reason it rejected Microsoft’s xCloud service. But as Microsoft pointed out, “All games  
20 available in the Xbox Game Pass catalog are rated for content by independent industry ratings bodies  
21 such as the ESRB and regional equivalents.”<sup>20</sup> Following these statements by Microsoft, Apple

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24 <sup>18</sup> *App Store Review Guidelines*, APPLE, (last visited Oct. 7, 2020), <https://developer.apple.com/app-store/review/guidelines/>.

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26 <sup>19</sup> *Id.*; see also Guideline 4.9 (providing that each streaming game must have an individual App Store page).

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28 <sup>20</sup> Nick Statt, *Microsoft condemns Apple’s App Store policies*, THE VERGE (Aug. 6, 2020), <https://www.theverge.com/2020/8/6/21358074/microsoft-xcloud-cloud-gaming-condems-apple-app-store-rules-iphone-ios>.

1 updated its Guidelines to explicitly require that “each [streaming] game must be submitted for  
2 review.”<sup>21</sup>

3 91. These examples confirm that Apple’s decisions are entirely arbitrary and Apple  
4 abuses it’s power as “gatekeeper” of the App Store to stifle rivals of Apple Arcade.

5 **D. Apple Outright Rejected Competing Subscription-Based Mobile Gaming**  
6 **Services.**

7 92. In perhaps its most flagrant anticompetitive act, when competing subscription-based  
8 mobile gaming services applied for approval for the App Store, Apple repeatedly rejected these  
9 services until the publishers either gave up or stripped their apps of key features that compete with  
10 Apple Arcade.

11 93. On August 5, 2020, *The Verge* reported that Microsoft had cut testing for the iOS  
12 version of its subscription-based mobile gaming service, xCloud. Microsoft cut its iOS testing a  
13 month ahead of schedule.

14 94. The next day, on August 6, *The Verge* reported that Microsoft’s xCloud would launch  
15 its subscription-based mobile gaming service for a number of platforms, excluding Apple’s App  
16 Store. Although Apple claimed that it rejected xCloud for violating Apple’s policies. Microsoft  
17 placed the blame squarely on Apple, stating “Apple stands alone as the only general purpose  
18 platform to deny consumers from cloud gaming and game subscription services like Xbox Game  
19 Pass.”<sup>22</sup>

20 95. The same day, *The Verge* report confirmed that Apple rejected Google’s Stadia for  
21 purported violations of Apple’s policies.

22 96. One day later, on August 7, 2020, *The New York Times* reported that Facebook  
23 worked for six months to obtain Apple’s approval for Facebook Gaming. Facebook sought approval  
24 from Apple at least five times to release Facebook Gaming in the App Store. Apple finally approved

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26 <sup>21</sup> *App Store Review Guidelines*, APPLE, (last visited Oct. 7, 2020), <https://developer.apple.com/app-store/review/guidelines/>.

27 <sup>22</sup> Nick Statt, *Apple confirms cloud gaming services like xCloud and Stadia violate App Store*  
28 *guidelines*, THE VERGE, (Aug. 6, 2020), <https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations>.

1 Facebook Gaming in August 2020, only after Facebook removed key features of its app that compete  
2 directly with Apple Arcade. Sheryl Sandberg lamented that “iOS users [will] have an inferior  
3 experience to those using Android.”<sup>23</sup> Facebook’s vice president for gaming, Vivek Sharma, further  
4 explained that Apple’s conduct creates “shared pain across the games industry, which ultimately  
5 hurts players and developers and severely hamstrings innovation on mobile for other types of  
6 formats like cloud gaming.”<sup>24</sup>

7 97. Apple has therefore foreclosed competition in the relevant market by either outright  
8 rejecting or approving only stripped-down versions of competing subscription-based mobile gaming  
9 services. Apple Arcade stands virtually alone in the relevant market.

#### 10 **VII. There are no Procompetitive Justifications for Apple’s Misconduct**

11 98. Apple claims that it bans subscription-based mobile gaming services from the App  
12 Store because they violate various Guidelines. But these justifications are a pretext. As set forth  
13 above, Apple keeps these apps out of the App Store because they directly compete with Apple  
14 Arcade.

15 99. Apple has primarily asserted that blocking these apps is necessary to enforce privacy  
16 and security safeguards. For example, Apple purported to block Facebook Gaming, Stadia, and  
17 xCloud in part because they are “cloud-based.” Since the games are not downloaded individually  
18 from the App Store, but rather streamed from a remote server, the games cannot be subjected to  
19 individual review or “appear[] in charts and search” on the App Store.<sup>25</sup> Apple additionally claims

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23 <sup>23</sup> Tom Warren, *Facebook slams Apple’s App Store policies, launches Facebook Gaming on iOS*  
24 *without games*, THE VERGE, (Aug. 7, 2020),  
25 [https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-](https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-facebook-gaming-ios)  
[facebook-gaming-ios](https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-facebook-gaming-ios).

26 <sup>24</sup> Seth Schiesel, *Facebook Gaming Finally Clears Apple Hurdle, Arriving in App Store*, THE NEW  
27 YORK TIMES, (Aug. 7, 2020), [https://www.nytimes.com/2020/08/07/technology/facebook-apple-](https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html)  
[gaming-app-store.html](https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html).

28 <sup>25</sup> Nick Statt, *Apple confirms cloud gaming services like xCloud and Stadia violate App Store*  
*guidelines*, THE VERGE, (Aug. 6, 2020), [https://www.theverge.com/2020/8/6/21357771/apple-cloud-](https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations)  
[gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations](https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations).

1 that these apps violate its rule that prohibits apps with the “main purpose” of distributing causal  
2 games.<sup>26</sup>

3 100. Yet Apple allows Mac users to access several different distribution channels to  
4 download software applications onto non-iPhone devices, such as Mac computers. For example,  
5 users can download software onto their computers from developer websites as well as purchase apps  
6 on third-party stores that compete with the App Store. There is no legitimate reason why this same  
7 structure could not operate safely and securely on iOS devices.

8 101. Although Apple has recently updated its Guidelines to expressly permit game  
9 streaming services such as Stadia and Microsoft xCloud, Apple continues to impose restrictions that  
10 prevent these services from meaningfully competing with Apple Arcade in any way. For example,  
11 subscription-based mobile gaming services still must provide an individual page for each game  
12 available in their libraries and each game must be downloaded individually from the App Store.  
13 Games also still must use in-app purchases to unlock features and functionality. As a result,  
14 competing subscription-based mobile gaming services are still prevented from offering a seamless  
15 user experience.

16 102. Apple also applies its Guidelines pretextually. As alleged herein, although Apple  
17 cited the inability to review Microsoft xCloud games for safety and performance as a reason for  
18 rejecting the xCloud App, Microsoft confirmed that all of the games available through xCloud are  
19 rated for content by independent industry ratings bodies. Only after Microsoft pointed this out did  
20 Apple change its Guidelines to specifically require that all games be submitted to Apple for  
21 individual review. Apple’s justification for rejecting xCloud is pretextual and provides no  
22 procompetitive justification for excluding competitors.

23 103. Apple also applies its app policies discriminatorily. For example, catalog apps, apps  
24 that provide access to multiple items like digital magazine, newspapers, and videos, are allowed,  
25 but gaming catalogs were not permitted until September 2020—after widespread criticism for

26 \_\_\_\_\_  
27 <sup>26</sup> Seth Schiesel, *Apple Rejects Facebook’s Gaming App, for at Least the Fifth Time*, THE NEW  
28 YORK TIMES, (July 18, 2020), <https://www.nytimes.com/2020/06/18/technology/apple-ios-facebook-gaming-app.html>.

1 rejecting competing subscription-based mobile gaming services. Even now, users cannot download  
2 games directly from a catalog app.

3 104. Apple also famously carves out exceptions for major streaming and subscription  
4 services such as Netflix and Amazon. These services are permitted to disable the ability to purchase  
5 subscriptions in app or in some cases to direct users to a browser to make purchases. In contrast,  
6 Microsoft has pointed out that Apple “consistently treats gaming apps differently . . . applying more  
7 lenient rules to non-gaming apps.”<sup>27</sup>

8 105. Indeed, there is ample motivation for Apple to go the extra mile to foreclose  
9 competition in the iOS Subscription-Based Mobile Gaming Services Market. As alleged herein,  
10 mobile gaming is a multibillion-dollar industry and gaming apps are the most lucrative category of  
11 the App Store. Apple stands to profit tremendously by keeping competitors out. As one writer  
12 summarized, “[a]ny potential but unrealized App Store revenue can be quite significant given the  
13 store’s size and reach.”<sup>28</sup>

14 106. Apple has particular motivation to protect its monopoly in the iOS Subscription-  
15 Based Mobile Gaming Services Market. Estimates projected that Apple Arcade would have 12  
16 million subscribers by the end of 2020.

17 107. Apple stands to lose millions if Apple Arcade is not successful. In June 2020,  
18 Bloomberg reported that Apple had earmarked tens of millions of dollars for the creation of Apple  
19 Arcade games and had spent at that time between one and five million dollars on several titles.  
20 Combined with the projected subscription revenue, Apple has a significant interest in ensuring the  
21 Apple Arcade is successful.

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25 <sup>27</sup> Tom Warren, *Facebook slams Apple’s App Store policies, launches Facebook Gaming on iOS*  
26 *without games*, THE VERGE, (Aug. 7, 2020),  
[https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-  
facebook-gaming-ios](https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-facebook-gaming-ios).

27 <sup>28</sup> Christian Zibreg, *Popular cloud gaming services cannot get their apps on the App Store under*  
28 *current rules*, iDB, (March 25, 2020), [https://www.idownloadblog.com/2020/03/25/game-  
streaming-services-app-store-rules/](https://www.idownloadblog.com/2020/03/25/game-streaming-services-app-store-rules/).

1           108. Thus, the timing and nature of Apple's conduct belie any procompetitive justification  
2 for Apple's rejection of competing services. Apple blocked its competitors not to protect consumers,  
3 but to maintain its monopoly in the market for iOS Subscription-Based Mobile Gaming Services  
4 and capitalize on its investment in Apple Arcade.

5  
6           **VIII. Anticompetitive Effects in the iOS Subscription-Based Mobile Gaming Services Market**

7           109. Apple has taken advantage of its dual role as both gatekeeper and market player,  
8 repeatedly abusing its monopoly power to prevent competition with Apple Arcade. Apple's anti-  
9 competitive conduct forecloses competition in the iOS Subscription-Based Mobile Gaming Market,  
10 affects a substantial volume of commerce in this market, and causes anticompetitive harms to  
11 consumers.

12           110. First, Apple's conduct enables it to charge supracompetitive prices for Apple Arcade.  
13 Apple has used its complete control of iOS and the App Store to exclude all potential and actual  
14 competition in the iOS Subscription-Based Mobile Gaming Services Market. To date, Apple has  
15 refused to approve the majority of competing subscription-based mobile gaming services. Those  
16 that have been approved cannot meaningfully compete because, like Facebook Gaming, they are  
17 stripped of competing features like game-playing, or they are forced to offer an inferior user  
18 experience. By eliminating all competition, Apple has also eliminated price competition in the  
19 relevant market. Indeed, iOS users have no access to competitive pricing for subscription-based  
20 mobile gaming services because they have *no options* other than Apple Arcade. Apple Arcade  
21 subscribers thus pay more for Apple Arcade than they would have in a competitive market.

22           111. Second, Apple's conduct extinguishes consumer choice. Apple's technical and  
23 contractual restrictions make it impossible for iOS users to access subscription-based mobile gaming  
24 services anywhere but the App Store. Apple alone determines what is available in the App Store.  
25 As described above, Apple has unlawfully and unfairly used its App Store Review Guidelines and  
26 outright rejection of competing services to ensure that Apple Arcade is the only subscription service  
27 available in the App Store where users can purchase and play both new and old and premium and  
28 freemium games. There is no other choice.



1           112. Third, by excluding all competing services from the App Store through the means  
2 described above, Apple has restricted the output of iOS-compatible subscription-based mobile  
3 gaming services. But for Apple’s conduct, more of these services, including xCloud and Stadia,  
4 would be available to iOS users through the App Store.

5           113. Fourth, Apple’s conduct prevents innovation. Apple’s technical and contractual  
6 restrictions as well as App Store Review Guidelines prevent developers from innovating for iOS.  
7 As examples only, subscription-based mobile gaming services are prevented from experimenting  
8 with alternative ways to list their games in the App Store or developing methods of upgrading their  
9 game offerings other than through in-app purchases. The lack of competition also reduces pressure  
10 for Apple to innovate and improve its own Apple Arcade. Consumers are therefore denied the  
11 opportunity to experience new and innovative gaming subscription services and content.

12           114. Finally, Apple’s conduct reduces the quality of subscription-based mobile gaming  
13 services available to iOS users. For example, since Apple only approved Facebook Gaming after  
14 Facebook Gaming stripped its game-playing feature, iOS users miss out on that feature altogether.  
15 Similarly, iOS consumers can only download games as separate apps, rather than directly through a  
16 user-friendly catalog listing. As a Microsoft spokesperson recently described, “This remains a bad  
17 experience for customers. Gamers want to jump directly into a game from their curated catalog . . .  
18 and not be forced to download over 100 apps to play individual games [.]”<sup>29</sup> Thus, the quality of  
19 subscription-based mobile gaming services available to iOS users is significantly reduced.

20           115. In sum, Apple’s conduct has the effect of excluding any subscription-based mobile  
21 gaming service that could meaningfully compete with Apple Arcade. By foreclosing all competition,  
22 Apple has extinguished Plaintiff’s and the Class’s freedom to choose between subscription-based  
23 mobile gaming services, caused reduced innovation and quality of service, and caused Plaintiff and  
24 the Class to pay more for Apple Arcade than they otherwise would have in a competitive market.

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27 <sup>29</sup> Kif Leswing, *Apple’s App Store had gross sales around \$50 billion last year, but growth is*  
28 *slowing*, CNBC Jan. 8, 2020), <https://www.cnbc.com/2020/01/07/apple-app-store-had-estimated-gross-sales-of-50-billion-in-2019.html>.

1 **IX. Apple's History of Monopolistic Abuse**

2 116. This is not Apple's first rodeo with respect to blocking competitor streaming and  
3 subscription apps under the guise of enforcing its App Store Review Guidelines.

4 117. Apple withheld approval from Valve's game streaming app, Steam Link, for nearly  
5 a year before approving a stripped-down version of the app. Steam Link functions as a remote  
6 desktop allowing users to stream games *they have already purchased* from their Steam library onto  
7 a mobile phone using Wi-Fi or a cable. Apple cited "business conflicts with app guidelines" as the  
8 reason for rejecting the app.<sup>30</sup> But, as Valve pointed out, Steam Link functioned exactly like  
9 numerous other remote desktop applications available in the App Store.

10 118. A month after Apple rejected Steam Link, Apple changed its Guidelines to permit  
11 "remote mirroring apps, like Steam Link, to contain an app store so long as purchases through that  
12 app store are processed on the desktop PC, and not on the iPhone or iPad itself."<sup>31</sup> Steam Link  
13 subsequently removed the store function from its iOS app. Nevertheless, Apple did not approve  
14 Steam Link for distribution on the App Store until a full year later.

15 119. Apple has also been embroiled in an ongoing feud with Spotify, a music steaming  
16 app, as well as a separate e-book app. The developers filed complaints with the European  
17 Commission alleging that Apple's App Store Review Guidelines impacted their ability to compete  
18 with Apple. Their apps compete directly with Apple Music and Apple Books. On June 16, 2020,  
19 following the developers' complaints, the European Commission opened a formal investigation into  
20 Apple to determine whether its conduct was causing harm to consumers by limiting their choices  
21 and preventing them from benefiting from lower prices. "We need to ensure that Apple's rules do  
22 not distort competition in markets where Apple is competing with other app developers," said  
23 Margrethe Vestager, the European Commission executive vice president in charge of competition  
24

25  
26 <sup>30</sup> Nick Statt, *Apple rejects Valve's Steam Link game streaming app over 'business conflicts'*, THE  
27 VERGE (May 24, 2018), <https://www.theverge.com/2018/5/24/17392470/apple-rejects-valve-steam-link-app-store-ios-game-steaming>.

28 <sup>31</sup> *App Store Review Guidelines*, APPLE, (last visited Oct. 7, 2020), <https://developer.apple.com/app-store/review/guidelines/>.

1 policy.<sup>32</sup> The same day, the European Commission opened another antitrust investigation to assess  
2 whether Apple's conduct in connection with Apple Pay “distort[s] competition and reduce[s] choice  
3 and innovation.”<sup>33</sup>

4 120. Just this year, on June 16, 2020, *The Verge* reported that Apple threatened to remove  
5 “Hey.com”, a new email subscription service offered by Basecamp. When Hey tried to introduce a  
6 bug fix, Apple told Basecamp to add an in-app subscription to prevent Hey from being removed  
7 from the App Store. Apple followed with a letter, citing App Store Review Guidelines that require  
8 in-app purchases for most apps with limited exceptions. Basecamp’s Chief Technology Officer,  
9 David Heinemeier Hansson, responded to Apple’s threat to remove Hey with outrage. He stated,  
10 “Apple has been capriciously, inconsistently, and in a few cases, cruelly, enforcing their App Store  
11 policies for YEARS.”<sup>34</sup>

12 121. Nor is this the first time Apple has abused its dominance in the tech industry. The  
13 following provide illustrative examples.

14 122. In 2012, the DOJ and thirty-three states brought an antitrust suit against Apple and  
15 several major eBook publishers in the Southern District of New York, alleging that the companies  
16 had colluded in a price-fixing scheme. The plaintiffs accused Apple and the other companies of  
17 conspiring to restrain retail prices for e-books in order to compete against Amazon’s price  
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23 <sup>32</sup> Adam Satariano and Jack Nicas, *Apple’s App Store Draws Antitrust Scrutiny in European Union*,  
24 NEW YORK TIMES (Jun. 16, 2020), <https://www.nytimes.com/2020/06/16/business/apple-app-store-european-union-antitrust.html>.

25 <sup>33</sup> Press Release, *Commission opens investigation into Apple practices regarding Apple Pay*,  
26 European Commission (Jun. 16, 2020), *available at*  
[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1075](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1075).

27 <sup>34</sup> Jacob Kastrenekas, *Hey.com exec says Apple is acting like ‘gangsters,’ rejecting App Store*  
28 *updates and demanding cut of sales*, THE VERGE (Jun. 16, 2020),  
<https://www.theverge.com/2020/6/16/21293419/hey-apple-rejection-ios-app-store-dhh-gangsters-antitrust>.

1 discounting model for selling e-books. Ultimately, the district court found “compelling evidence”  
2 illustrated that Apple played a “central role” in the price-fixing conspiracy.<sup>35</sup>

3         123. In 2010, the DOJ brought an antitrust action against Apple and several other major  
4 Silicon Valley companies, such as Google and eBay, alleging that the companies had entered into a  
5 conspiracy not to poach each other’s employees. The complaint alleged that the companies had  
6 entered into an agreement not to cold call employees of other major technology companies with  
7 employment opportunities. Apple and other defendants eventually agreed to pay over \$400 million  
8 to settle the lawsuit.

9         124. In 2009, the Federal Communications Commission (“FCC”) investigated Apple  
10 when the company prevented users from downloading the Google Voice app from the App Store.  
11 Google Voice was a voicemail program that directly competed with Apple’s own Visual Voicemail.  
12 Apple claimed that Google Voice ruined iPhone user experience, but eventually relented after the  
13 FCC initiated investigations. As of November 2010, Google Voice was available on the App Store  
14 once more.

15         125. In 2010, Apple changed the Terms of Service for its software development kit,  
16 preventing developers for using coding languages that were not pre-approved by Apple. This rule  
17 prevented developers from using Adobe Animate or similar software to develop apps for Apple  
18 products. The Federal Trade Commission and the Department of Justice (“DOJ”) both participated  
19 in an antitrust investigation against Apple related to the incident. In response to public outcry, Apple  
20 rolled-back the restrictions later that year.

21         126. In 2019, Apple demanded changes from several apps that granted parental controls  
22 over Apple devices or tracked device usage. Apple went so far as to remove between eleven and  
23 seventeen of the most frequently downloaded of these apps. These apps directly competed with  
24 Apple’s own parental control and device tracking apps. Apple attempted to justify its decisions by  
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27  
28 <sup>35</sup> Nate Raymond and Jonathan Stempel, *Apple colluded on e-book prices, judge finds*,  
REUTERS (Jul. 10, 2013), <https://www.reuters.com/article/us-apple-ebooks/apple-colluded-on-e-book-prices-judge-finds-idUSBRE9690GE20130710>.

1 depicting the competing apps as a “privacy risk”.<sup>36</sup> Two of these parental apps filed a complaint  
2 with the EU following Apple’s decision to remove them from the App Store.

3 127. On June 24, 2020, reports surfaced of a DOJ antitrust probe into Apple’s “ironclad  
4 control of its App Store.”<sup>37</sup> Then, in September 2020, the Italian and Australian antitrust authorities  
5 announced investigations into, among other things, the fairness of terms and conditions governing  
6 the iCloud and the app store.

7 128. With this track record, it is not surprising that Apple has once again decided to wield  
8 the weight of its market power to illegally disadvantage its competitors to the detriment of  
9 consumers.

### 10 ANTITRUST INJURY

11 129. Plaintiff and class members have suffered antitrust injury as a direct result of Apple’s  
12 unlawful conduct.

13 130. By impairing competition in the iOS Subscription-Based Mobile Gaming Services  
14 Market, Apple’s unlawful conduct has enabled it to extinguish consumer choice, hamper innovation  
15 and reduce quality, and charge supracompetitive prices in the relevant market.

16 131. As a direct and proximate result of the unlawful conduct alleged herein, Apple has  
17 benefitted unjustly from the supracompetitive prices and profits on their sales of Apple Arcade  
18 subscriptions resulting from their unlawful and inequitable conduct, and have thus far retained the  
19 illegally obtained profits.

20 132. Plaintiff and the Class are the direct purchasers of Apple Arcade. When Plaintiff and  
21 the Class purchased Apple Arcade, they did so directly through the App Store and paid Apple  
22 directly, using their credit card or other payment sources.

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26 <sup>36</sup> Michael Grothaus, *Apple restricted Screen Time-like apps due to concerns over children privacy*,  
27 FASTCOMPANY (Apr. 29, 2019), <https://www.fastcompany.com/90341325/apple-restricted-screen-time-like-apps-due-to-concerns-over-children-privacy>.

28 <sup>37</sup> Leah Nysten, *Apple’s easy ride from U.S. authorities may be over*, POLITICO (Jun. 24, 2020),  
<https://www.politico.com/news/2020/06/24/justice-department-anti-trust-apple-337120>.

1 CLASS ACTION ALLEGATIONS

2 133. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23  
3 individually and on behalf of the following Class:

4 All persons residing within the United States who directly paid a subscription fee to  
5 Apple for Apple Arcade from September 19, 2019 through such time as the  
6 anticompetitive effects of Apple’s anticompetitive conduct ceases (the “Class  
Period”).<sup>38</sup>

7 134. Excluded from the Class are: (1) any Judge or Magistrate presiding over this action  
8 and any members of their families; (2) Defendant, Defendant’s subsidiaries, parents, successors,  
9 predecessors, and any entity in which Defendants or its parent has a controlling interest and their  
10 current or former employees, officers, and directors; (3) persons who properly execute and file a  
11 timely request for exclusion from the Class; (4) persons whose claims in this matter have been  
12 finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel and Defendant’s  
13 counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

14 135. **Ascertainability:** Membership of the Class is defined based on objective criteria,  
15 and individual members will be identifiable from Defendant’s records.

16 136. **Numerosity:** The exact number of members of the Class is unknown and unavailable  
17 to Plaintiff at this time, but individual joinder in this case is impracticable. The Class likely consists  
18 of millions of individuals, and the members can be identified through Defendants’ records.

19 137. **Predominant Common Questions:** The Class’ claims present common questions  
20 of law and fact, and those questions predominate over any questions that may affect individual Class  
21 members. Common questions for the Class include, but are not limited to, the following:

- 22 a. Whether Apple’s conduct constitutes a violation of the federal antitrust laws;  
23 b. Whether the U.S. market for iOS Subscription-Based Mobile Gaming  
24 Services, as defined herein, constitutes a relevant market;

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28 <sup>38</sup> Plaintiffs have defined the Class based on currently available information and hereby reserve  
the right to amend the definition of the Class, including, without limitation, the Class Period

- 1 c. Whether Apple possesses sufficient market power in the relevant market to
- 2 cause anticompetitive effects;
- 3 d. Whether Apple possesses monopoly power in the relevant market;
- 4 e. Whether Apple's conduct caused anticompetitive effects in the relevant
- 5 market;
- 6 f. Whether Apple's conduct excluded other market participants in the relevant
- 7 market;
- 8 g. Whether Apple maintains an illegal monopoly in the United States iOS
- 9 Subscription-Based Mobile Gaming Services Market;
- 10 h. Whether Apple's conduct caused Plaintiff and the Class to pay
- 11 supracompetitive prices for Apple Arcade;
- 12 i. Whether Apple's conduct has harmed or at least not benefited consumers;
- 13 j. Whether Apple was unjustly enriched to the detriment of the Class;
- 14 k. Whether the Class is entitled to restitution and/or disgorgement; and
- 15 l. The appropriate classwide measure of damages.

16 138. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the  
17 proposed Class. Defendants' conduct that gave rise to Plaintiff claims and the members of the Class  
18 is the same for all members of the Class.

19 139. **Adequate Representation:** Plaintiff has and will continue to fairly and adequately  
20 represent and protect the interests of the Class. Plaintiff has retained counsel competent and  
21 experienced in complex litigation and class actions, including antitrust violations. Plaintiff has no  
22 interest that is antagonistic to those of the Class, and Defendant has no defenses unique to any  
23 Plaintiff. Plaintiff and his/her counsel are committed to vigorously prosecuting this action on behalf  
24 of the members of the Class, and they have the resources to do so. Neither Plaintiff nor his/her  
25 counsel have any interest adverse to those of the other members of the Class.

26 140. **Substantial Benefits:** This class action is appropriate for certification because class  
27 proceedings are superior to other available methods for the fair and efficient adjudication of this  
28 controversy and joinder of all members of the Class is impracticable. This proposed class action

1 presents fewer management difficulties than individual litigation, and provides the benefits of single  
2 adjudication, economies of scale, and comprehensive supervision by a single court. Class treatment  
3 will create economies of time, effort, and expense and promote uniform decision-making.

4 141. Plaintiff reserves the right to revise the foregoing class allegations and definitions  
5 based on facts learned and legal developments following additional investigation, discovery, or  
6 otherwise.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of Section 2 of the Sherman Act (15 U.S.C. § 2)  
10 Monopoly Maintenance**

11 142. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
12 the same force and effect as if fully restated herein.

13 143. The iOS Subscription-Based Mobile Gaming Services Market is the relevant market.  
14 There are no reasonably interchangeable services for iOS Subscription-Based Mobile Gaming  
15 Services Market.

16 144. Apple has monopoly power in the iOS Subscription-Based Mobile Gaming Services  
17 Market. Apple has the power to control price and exclude competition in the relevant market.  
18 Indeed, Apple is the only entity who can distribute subscription-based mobile gaming services on  
19 iOS.

20 145. Apple unlawfully maintains its monopoly in the iOS Subscription-Based Mobile  
21 Gaming Services Market through several related anticompetitive acts, including but not limited to,  
22 imposing technical and contractual restraints on iOS, applying its App Store Review Guidelines to  
23 foreclose competition, and refusing to approve competing services for the App Store, all of which  
24 allow Apple to prevent the distribution of iOS subscription-based mobile gaming services apps that  
25 pose a threat to Apple Arcade.

26 146. Apple's conduct affects a substantial amount of interstate commerce.

27 147. Apple's conduct has substantial anti-competitive effects, including but not limited  
28 to, increased prices, stymied innovation, reduced quality, and limited choice for consumers in the  
market for subscription-based mobile gaming services.



1 148. As consumers who subscribed to Apple Arcade, Plaintiff and Class members have  
2 been and will continue to be harmed by Apple’s anticompetitive conduct in a manner that the  
3 antitrust laws were designed to prevent. Plaintiff and Class members have paid and will continue to  
4 pay more for Apple Arcade than they would have in a competitive market.

5 **SECOND CLAIM FOR RELIEF**  
6 **Violation of Section 2 of the Sherman Act (15 U.S.C. § 2)**  
7 **Denial of Essential Facility**

8 149. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
9 the same force and effect as if fully restated herein.

10 150. The iOS Subscription-Based Mobile Gaming Services Market is the relevant market.

11 151. Apple has monopoly power in the iOS Subscription-Based Mobile Gaming Services  
12 Market.

13 152. Apple unlawfully maintains its monopoly power in the iOS Subscription-Based  
14 Mobile Gaming Services Market through its unlawful denial to other subscription-based mobile  
15 gaming services distributors of an essential facility—access to iOS and the App Store—which  
16 prevents them from competing in the iOS Subscription-Based Mobile Gaming Services Market.

17 153. Apple possesses complete control over iOS and the App Store, both of which are  
18 essential to effective competition in the iOS Subscription-Based Mobile Gaming Services Market.

19 154. Subscription-based mobile gaming services distributors are unable to duplicate  
20 Apple’s iOS.

21 155. Subscription-based mobile gaming services distributors are unable to access the  
22 access the App Store without explicit permission and approval from Apple.

23 156. It is technically feasible for Apple to provide access to iOS and the App Store to  
24 other subscription-based mobile gaming services distributors, and it would not interfere with or  
25 significantly inhibit Apple’s ability to conduct its business.

26 157. Apple’s denial of access to iOS has no legitimate business purpose, and serves only  
27 to assist Apple in maintaining its unlawful monopoly position in the iOS Subscription-Based Mobile  
28 Gaming Services Market.

1 158. Through its denial of its essential facilities, Apple maintains its monopoly power in  
2 the iOS Subscription-Based Mobile Gaming Services Market.

3 159. Apple’s conduct affects a substantial volume of interstate commerce.

4 160. Apple’s conduct has substantial anti-competitive effects, including but not limited  
5 to, increased prices, reduced innovation and quality, and limited choice for consumers in the market  
6 for subscription-based mobile gaming services.

7 161. As consumers who subscribed to Apple Arcade, Plaintiff and Class members have  
8 been and will continue to be harmed by Apple’s anticompetitive conduct in a manner that the  
9 antitrust laws were designed to prevent. Plaintiff and Class members have paid and will continue to  
10 pay more for Apple Arcade than they would have in a competitive market.

11 **THIRD CLAIM FOR RELIEF**  
12 **Violation of Section 1 of the Sherman Act (15 U.S.C. § 1)**  
13 **Unreasonable Restraint of Trade**

14 162. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
15 the same force and effect as if fully restated herein.

16 163. Section 1 of the Sherman Act prohibits “every contract . . . in restraint of trade or  
17 commerce among the several States.” See 15 U.S.C. § 1.

18 164. The iOS Subscription-Based Mobile Gaming Services Market is a relevant market.  
19 There are no reasonably interchangeable services for iOS Subscription-Based Mobile Gaming  
20 Services.

21 165. To reach iOS users, Apple forces developers of subscription-based mobile gaming  
22 services developers to comply with its Development Agreement and App Store Review Guidelines,  
23 including the requirement that iOS developers distribute their apps exclusively through the App  
24 Store.

25 166. By conditioning access to iOS users on the Development Agreement and App Store  
26 Review Guidelines, Apple prevents developers from releasing subscription-based gaming services  
27 to iOS users that threaten Apple Arcade. This constitutes an unreasonable restraint of competition  
28 and trade.

1 167. Apple’s contractual restraints serve no legitimate or pro-competitive purpose that  
2 could justify its anti-competitive effects.

3 168. Apple’s contractual restraints have substantial anti-competitive effects, including but  
4 not limited to, increased prices, reduced innovation and quality, and limited choice for consumers  
5 in the market for subscription-based mobile gaming services.

6 169. As consumers who subscribed to Apple Arcade, Plaintiff and Class members have  
7 been and will continue to be harmed by Apple’s anti-competitive conduct in a manner that the  
8 antitrust laws were designed to prevent. Plaintiff and Class members have paid and will continue to  
9 pay more for Apple Arcade than they would have in a competitive market.

10 **FOURTH CLAIM FOR RELIEF**  
11 **Violation of the California Cartwright Act**  
12 **Unreasonable Restraint of Trade**  
13 **Cal. Bus. & Prof. Code § 16700 *et seq.***

14 170. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
15 the same force and effect as if fully restated herein.

16 171. Apple’s acts and practices as detailed above violate the Cartwright Act, Cal. Bus. &  
17 Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more  
18 persons to restrain trade or commerce or to prevent market competition. *See id.* §§ 16720, 16726.

19 172. Under the Cartwright Act, a “combination” is formed when the anticompetitive  
20 conduct of a single firm coerces other market participants to involuntarily adhere to the  
21 anticompetitive scheme.

22 173. The iOS Subscription-Based Mobile Gaming Services Market is the relevant market.

23 174. Apple has monopoly power in the iOS Subscription-Based Mobile Gaming Services  
24 Market.

25 175. Apple forces developers of subscription-based mobile gaming services developers to  
26 agree to the terms contained in its Developer Agreement, including that iOS developers distribute  
27 their apps solely through the App Store. Section 3.2(g) of the Developer Agreement contains the  
28 requirement that developers distribute their apps exclusively through the App Store. Apple also  
conditions subscription-based mobile gaming services developers’ access to iOS on their agreement

1 not to distribute third-party app stores. Section 3.3.2(b) of the Developer Agreement prohibits  
2 “Application[s]” that “create a store or storefront for other code or applications[.]” These provisions  
3 unreasonably restrain competition in the iOS Subscription-Based Mobile Gaming Services Market.

4 176. These challenged provisions have no legitimate or procompetitive purpose or effect,  
5 and unreasonably restrain competition in the iOS Subscription-Based Mobile Gaming Services  
6 Market.

7 177. Apple’s conduct and practices have substantial anti-competitive effects, including  
8 increased prices, hampered innovation, and reduced quality of service in the market for subscription-  
9 based mobile gaming services.

10 178. It is appropriate to bring this action under the Cartwright Act because many of the  
11 affected consumers reside in California, Apple has its principal place of business in California, and  
12 overt acts in furtherance of Apple’s anticompetitive scheme took place in California.

13 179. As a result of Apple’s unlawful and unfair conduct, Plaintiff and Class members have  
14 been and will continue to be harmed by Apple’s anti-competitive conduct. Plaintiff and Class  
15 members have paid and will continue to pay more for Apple Arcade than they would have in a  
16 competitive market.

17 **FIFTH CLAIM FOR RELIEF**  
18 **Violation of California Unfair Competition Law (“UCL”)**  
19 **Cal. Bus. & Prof. Code § 17200 *et seq.***

20 180. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
21 the same force and effect as if fully restated herein.

22 181. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent  
23 business act or practice.”

24 182. Apple’s conduct as alleged herein constitutes unlawful or unfair business acts or  
25 practices as prohibited by the UCL.

26 183. Apple’s conduct constitutes unlawful or unfair business acts or practices, in that  
27 Apple has violated § 16700 *et seq.*, as set forth above.  
28

1 184. Apple's conduct as alleged herein, including unlawfully eliminating all competition  
2 in the relevant market, otherwise constitutes unlawful or unfair business acts or practices as  
3 prohibited by the UCL.

4 185. As a result of Apple's unlawful and unfair conduct, Plaintiff and Class members were  
5 injured in their business and/or property because they paid more for Apple Arcade than they would  
6 have in a competitive market.

7 186. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff and Class members  
8 seek an order enjoining Apple from continuing to conduct business through unlawful or unfair acts  
9 and practices.

10 187. Plaintiff and the Class also seek an order for the disgorgement and restitution of all  
11 monies from the sale of Apple Arcade, which were unjustly acquired through acts of unlawful or  
12 unfair competition.

13 **SIXTH CLAIM FOR RELIEF**  
14 **Unjust Enrichment**

15 188. Plaintiff re-alleges and incorporates the preceding allegations of this Complaint with  
16 the same force and effect as if fully restated herein.

17 189. Apple received benefits from Plaintiff and Class members and unjustly retained those  
18 benefits at their expense.

19 190. In particular, Apple received benefits from Plaintiff and Class members in the form  
20 of supracompetitive prices for Apple Arcade. Apple's financial benefits resulting from its unlawful  
21 and inequitable conduct are economically traceable to overpayments for Apple Arcade by Plaintiff  
22 and Class members

23 191. Additionally, Apple used its restrictive Developer Agreement and App Store Review  
24 Guidelines and rejected competitor subscription-based mobile gaming services to exclude actual  
25 and potential competition for its own gain, providing Apple with economic, intangible, and other  
26 benefits, including an unfair economic advantage over its competitors.

27 192. Apple unjustly retained those benefits at the expense of Plaintiff and Class members  
28 because Apple's conduct damaged Plaintiff and Class members, all without providing any  
commensurate compensation to Plaintiff and the Class.

1 193. The benefits that Apple derived from Plaintiff and Class members rightly belong to  
2 Plaintiff and Class members. It would be inequitable under unjust enrichment principles in  
3 California and every other state for Apple to be permitted to retain any of the profit or other benefits  
4 it derived from the unfair and unconscionable methods, acts, and trade practices alleged in this  
5 Complaint.

6 194. Apple should be compelled to disgorge in a common fund for the benefit of Plaintiff  
7 and Class members all unlawful or inequitable proceeds it received, and such other relief as the  
8 Court may deem just and proper.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff individually and on behalf of the Class, respectfully requests that  
11 the Court:

- 12 A. Certify the Class pursuant to the provisions of Rule 23 of the Federal Rules of Civil  
13 Procedure and order that notice be provided to all Class members;
- 14 B. Designate Plaintiff as representative of the Class and the undersigned counsel as  
15 Class Counsel;
- 16 C. Award Plaintiff and the Class compensatory damages in an amount to be determined  
17 by the Court and treble and punitive damages to punish Apple’s egregious conduct  
18 as described herein, and to deter Apple and others from engaging in similar conduct;
- 19 D. Award Plaintiff and the Class injunctive relief, as permitted by law or equity,  
20 including enjoining Apple from continuing the unlawful practices set forth herein;
- 21 E. Award Plaintiff and the Class statutory interest and penalties;
- 22 F. Award Plaintiff and the Class their costs, prejudgment and post judgment interest,  
23 and attorneys’ fees;
- 24 G. Order disgorgement and restitution;
- 25 H. Establish a constructive trust into which Apple’s ill-gotten gains shall be disgorged  
26 and from which Plaintiff and members of the Class may obtain restitution; and
- 27 I. Grant such other relief that the Court may deem just and proper.

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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for all issues so triable.

Dated: October 8, 2020

**BERMAN TABACCO**

By: /s/ Todd A. Seaver  
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*Attorneys for Plaintiff and the Proposed Class*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Apple Unlawfully Blocked Microsoft, Facebook, Google from iOS Subscription Gaming Market](#)

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