

1 Elizabeth T. Castillo (#280502)  
 ecastillo@cpmlegal.com  
 2 Mark C. Molumphy (#168009)  
 mmolumphy@cpmlegal.com  
 3 Tamarah P. Prevost (#313422)  
 tprevost@cpmlegal.com  
 4 Noorjahan Rahman (#330572)  
 nrahman@cpmlegal.com  
 5 **COTCHETT, PITRE & McCARTHY, LLP**  
 San Francisco Airport Office Center  
 6 840 Malcolm Road, Suite 200  
 Burlingame, CA 94010  
 7 Telephone: (650) 697-6000  
 Facsimile: (650) 697-0577

8 *Attorneys for Plaintiff Brian McNamara*  
 9 *and all others similarly situated*

10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN JOSE DIVISION**

14 **BRIAN McNAMARA**, on behalf of  
 15 himself and all others similarly  
 16 situated,

17 Plaintiff,

18 v.

19 **GOOGLE LLC and ALPHABET  
 INC.**,

20 Defendants.

Case No.

**CLASS ACTION COMPLAINT  
 FOR VIOLATIONS OF:**

1. **THE SHERMAN ACT –  
 MONOPOLIZATION (15  
 U.S.C. § 2);**
2. **THE SHERMAN ACT –  
 ATTEMPTED  
 MONOPOLIZATION (15  
 U.S.C. § 2); and**
3. **CALIFORNIA UNFAIR  
 COMPETITION LAW (CAL.  
 BUS. & PROF. CODE §§  
 17200, ET SEQ.)**

**DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

1

2 I. NATURE OF ACTION ..... 1

3 II. JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT ..... 1

4 III. PARTIES ..... 3

5 A. Plaintiff..... 3

6 B. Defendants..... 3

7 IV. FACTUAL ALLEGATIONS..... 3

8 A. Google..... 3

9 B. The Android Mobile App Market ..... 4

10 C. Google’s Willful Acquisition and Maintenance of its Monopoly in the  
11 Android Mobile App Market ..... 8

12 V. ANTITRUST INJURY ..... 8

13 VI. MARKET DEFINITION ..... 9

14 VII. TOLLING OF STATUTE OF LIMITATIONS..... 9

15 VIII. CLASS ACTION ALLEGATIONS ..... 11

16 IX. CAUSES OF ACTION ..... 15

17 FIRST CAUSE OF ACTION  
18 Violation of Sherman Act -- Monopolization  
19 (15 U.S.C. § 2) ..... 15

20 SECOND CAUSE OF ACTION  
21 Violation of Sherman Act – Attempted Monopolization  
22 (15 U.S.C. § 2) ..... 17

23 THIRD CAUSE OF ACTION  
24 Violation of the California Unfair Competition Law  
25 (Cal. Business and Professions Code § 17200, *et seq.*) ..... 19

26 X. PRAYER FOR RELIEF..... 20

27 XI. DEMAND FOR JURY TRIAL..... 21

28

1 *“It is stunning that members of Congress mostly agree that four of*  
2 *America’s most successful companies are bullies that abuse their power to*  
3 *stay on top.”*

4 *“The House report was unequivocal that Google and Facebook are*  
5 *monopolies, and that elements of Amazon and Apple are as well.”*

6 —Shira Ovide, *Congress Agrees: Big Tech Is Broken*, N.Y. TIMES, Oct. 7, 2020.<sup>1</sup>

7 **I. NATURE OF ACTION**

8 1. Plaintiff Brian McNamara (“Plaintiff”), on behalf of himself and all  
9 others similarly situated (the “Class” as defined below), on personal knowledge as to  
10 the facts pertaining to him and on information and belief as to all other matters, and  
11 based on the investigation of counsel, brings this class action for damages, injunctive  
12 relief, and other relief pursuant to federal antitrust laws and California antitrust,  
13 unfair competition, and consumer protection laws. Plaintiff demands a trial by jury  
14 and alleges as follows.

15 2. Google’s Play Store is available to mobile device users running Google’s  
16 Android operating system (“OS”). While Google claims that the Android OS is  
17 maintained as “open” source software, Google has engaged in course of conduct  
18 designed to deter competition in the market for Android mobile applications of  
19 “apps” and products sold with such apps (“Android Mobile App Market”).

20 3. Accordingly, Plaintiff and the putative Class have overpaid or  
21 otherwise suffered economic losses due to Google’s monopolization of this market  
22 and therefore sue for damages, injunctive relief, and other relief.

23 **II. JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

24 4. Plaintiff brings this action under Sections 4, 12, and 16 of the Clayton  
25 Act (15 U.S.C. §§ 15, 22, and 26) for treble damages, injunctive relief, other relief,  
26 and reasonable attorneys’ fees and costs with respect to the injuries sustained by

27 \_\_\_\_\_  
28 <sup>1</sup> Available at <https://www.nytimes.com/2020/10/07/technology/congress-big-tech.html> (last accessed October 20, 2020).

1 Plaintiffs arising from violations by Defendants of the federal antitrust laws,  
2 including Section 2 of the Sherman Antitrust Act (15 U.S.C. § 2).

3 5. This Court has jurisdiction over this action pursuant to Sections 1331,  
4 1337(a) and 1367 of Title 28 of the United States Code (28 U.S.C. §§ 1331, 1337(a)  
5 and 1367).

6 6. This Court has *in personam* jurisdiction over Defendants because each,  
7 directly and/or through its ownership or control of subsidiaries: (a) transacted  
8 business in the United States, including in this District; (b) are registered to do  
9 business in the state of California; (c) had substantial aggregate contacts with the  
10 United States, including this District; and/or (d) engaged in anticompetitive acts  
11 that were directed at, and had a direct, substantial, and reasonably foreseeable and  
12 intended effect of injuring, the business or property of persons and entities residing  
13 in, located in, or doing business throughout the United States, including in this  
14 District. Defendants conduct business throughout the United States, including in  
15 this District, and have purposefully availed themselves of the laws of the United  
16 States.

17 7. Venue is proper in this District pursuant to Sections 15 and 22 of Title  
18 15 of the United States Code (15 U.S.C. §§ 15 and 22) and Sections 1391(b) and (c) of  
19 Title 28 of the United States Code (28 U.S.C. § 1391(b) and (c)) because a substantial  
20 part of the events giving rise to Plaintiff's claims occurred in this District, a  
21 substantial portion of the affected interstate trade and commerce was carried out in  
22 this District, and one or more of the Defendants reside in this District or is licensed  
23 to do business in this District. Each Defendant has transacted business, maintained  
24 substantial contacts, and/or committed overt acts in furtherance of the illegal  
25 restraint of trade throughout this District. The anticompetitive conduct alleged  
26 herein has been directed at, and has had the intended effect of, causing injury to  
27 persons residing in, located in, or doing business in this District.  
28

1           8. Pursuant to the Northern District of California’s Civil Local Rule 3-2(c)  
2 & (e), the intradistrict assignment should be to the San Jose Division. This action  
3 arises in Santa Clara County because a substantial part of the events giving rise to  
4 these claims occurred in Santa Clara County. Additionally, Google has offices in  
5 Mountain View, Sunnyvale, and San Jose.

6 **III. PARTIES**

7 **A. Plaintiff**

8           9. Plaintiff Brian McNamara (“Plaintiff”) is an individual and purchased  
9 and paid Google for one or more apps through the Google Play Store. Plaintiff is a  
10 resident of Half Moon Bay, California.

11 **B. Defendants**

12           10. Google LLC is a limited liability company organized under the laws of  
13 Delaware with its principal place of business in Mountain View, California. Google  
14 LLC is a technology company that provides internet-related services and products,  
15 including online advertising technologies and a search engine.

16           11. Alphabet Inc. is a Delaware corporation and has its principal place of  
17 business in Mountain View, California. Google LLC is a wholly owned subsidiary of  
18 Alphabet Inc.

19           12. Google LLC and Alphabet Inc. are collectively referred to herein as  
20 “Google.”

21 **IV. FACTUAL ALLEGATIONS**

22 **A. Google**

23           13. Google was launched in 1998 as a general online search engine that  
24 served users web results in response to online queries. Google’s key innovation was  
25 its PageRank algorithm, which ranked the relevance of a webpage by assessing how  
26 many other webpages linked to it. PageRank enabled Google to improve the quality  
27 of its search results even as the web rapidly grew in contrast with the technology  
28

1 used by rival search engines. While Google had entered a crowded field, it had  
2 become the world's largest search engine by 2000. Google launched AdWords, an  
3 online advertising service that let businesses purchase keyword advertising to  
4 appear on Google's search results page—an offering that would evolve to become the  
5 heart of Google's business model—later that year.

6 14. Google is now ubiquitous across the digital economy, serving as the  
7 infrastructure for core products and services online. It has grown and maintained its  
8 search engine dominance, such that “Googling” something is now synonymous with  
9 online search itself. Google is now also the largest provider of digital advertising, a  
10 leading web browser, a dominant mobile operating system, and a major provider of  
11 digital mapping, email, cloud computing, and voice assistant services, alongside  
12 dozens of other offerings. Nine of Google's products—Android, Chrome, Gmail,  
13 Google Search, Google Drive, Google Maps, Google Photos, Google Play Store, and  
14 YouTube—have more than a billion users *each*. Each of these services provides  
15 Google with a trove of user data, reinforcing its dominance across markets and  
16 driving greater monetization through online ads.

17 15. Google is one of the world's largest corporations. For 2019, Google  
18 reported total revenues of \$160.7 billion—up 45% from 2017—and more than \$33  
19 billion in net income. Google has enjoyed strong and steady profits, with profit  
20 margins greater than 20 percent for nine out of the last 10 years, close to three times  
21 larger than the average for a U.S. firm. Financial analysts predict that Google is  
22 well positioned to maintain its dominance, noting that “Alphabet has established  
23 unusually deep competitive moats around its business.”

24 **B. The Android Mobile App Market**

25 16. In the late 1990s and early 2000s, when Google was formed, internet  
26 searches were almost exclusively performed through browsers on computers.  
27 However, over the past two decades, individuals increasingly used non-desktop  
28 devices to access the internet, such as phones and other mobile devices. Thus,

1 Google launched a business policy to target users of mobile devices and to ensure  
2 their products adopt versions of Google’s technology, products and operating  
3 systems.

4 17. A mobile app is software designed for use on a mobile device to provide  
5 access to digital content or services. Popular mobile apps allow users to share  
6 content or play games and, importantly, permit “in app” sale or purchase  
7 transactions for goods and services. Mobile apps can be pre-installed on a mobile  
8 device as a component of the OS by the Original Equipment Manufacturer (“OEM”),  
9 or otherwise loaded directly onto the mobile device from the web using a web  
10 browser (a process that Google refers to as “sideloading”). The most frequent way  
11 that consumers access mobile apps is through an app store, which itself may be pre-  
12 installed on the mobile device. Google uses its Google Play Store to control the  
13 mobile app market for devices using the Android OS.

14 18. An app store is the central point for users to access mobile apps. It  
15 centralizes and curates the distribution of mobile apps in a convenient manner for  
16 users, and allows users to search, review and buy a mobile app in one spot.

17 19. There is separate market for mobile apps specific to the OS, including  
18 apps developed for Apple iOS and only work on Apple mobile devices and apps  
19 developed for Android OS and only work on Android mobile devices. For the same  
20 reason, Apple’s App Store and the Google Play Store do not compete against one  
21 another.

22 20. In order to establish dominance, Google released the Android mobile  
23 operating system. Google released the Android code for free as “open source,” which  
24 means that anyone could access the code and modify it. Modifying the operating  
25 system constitutes a “fork.”

26 21. The open source aspect of the Android OS was key to its wide adoption  
27 by OEMs (such as LG, Motorola, Samsung, etc.) and phone carriers (such as AT&T,  
28 T-Mobile/Spring, Verizon, etc.). Google’s supposed lack of control over an open

1 source OS led skeptical OEMs and phone carriers to use Android instead of other  
2 choices then available. The open source model suggested that the distributors, and  
3 not Google, would ultimately retain control over their devices and the app ecosystem  
4 on those devices.

5 22. However, once the distributors agreed to use Android OS, app  
6 developers looking for wide distribution of their apps were then incentivized by  
7 Google to develop apps compatible with Android OS. As more apps became available  
8 on Android OS, the operating system became more attractive to consumers which in  
9 turn led to even more developers designing for Android.

10 23. To achieve desired network effects and make the Android system  
11 ubiquitous, Google then “shared” its search advertising and app store revenues with  
12 distributors to further induce distributors to give up control over the OS and what  
13 apps come preinstalled on mobile devices.

14 24. Google solidified market dominance of Android OS through a series of  
15 contracts with distributors designed to minimize competition. Google requires  
16 OEMs such as LG, Motorola, and Samsung to enter “anti-forking agreements.”  
17 These agreements specifically forbid OEMs from developing or distributing versions  
18 of Android that do not comply with onerous Google-controlled technical standards.  
19 The signatories may not distribute devices with Android forks, or us their powerful  
20 brands to market forks on behalf of third parties. As a result of Google’s  
21 anticompetitive practices, Android OS represents over 95 percent of licensable  
22 mobile operating systems for smartphones and tablets in the United States.

23 25. With control over the dominant Android OS, Google exercised its  
24 monopoly power to establish the Google Play Store as the dominant “store” by which  
25 other applications can be downloaded for use by consumers on the Android  
26 ecosystem.

27 26. Google required that mobile device OEMs pre-install the Google Play  
28 Store on all mobile devices, knowing that users rarely change defaults. Google also



1 refuses to allow any rival app store to be downloaded from the Google Play Store.  
2 Indeed, third-party app stores could only be accessed by “sideloading,” a complicated  
3 multi-step process where users are warned that sideloading is unsafe. Thus, while  
4 Google theoretically permits sideloading third-party app stores, few users pursue  
5 this option because Google implements significant frictions designed to steer  
6 consumers away from sideloading.

7 27. Google also limits basic app functions that are available to apps  
8 downloaded on the Google Play Store, including making it more difficult for users to  
9 update apps (versus automatic updates in the mobile device’s background).

10 28. Because the Google Play Store is the primary way users install  
11 applications on Android devices, the Play Store effectively functions as a gatekeeper  
12 for software distribution on all mobile devices with Android OS.

13 29. As a result of its monopolistic conduct, Google has extracted  
14 supracompetitive prices for its Android app distribution services and in-app  
15 purchases made through the Google Play Store, including a 30 percent commission  
16 on sales of paid apps and a 30 percent fee for in-app purchases. Google collects and  
17 processes these commissions and fees directly from Plaintiff and Class Members,  
18 remitting the remainder of their payment to the mobile app developer.

19 30. Google uses its gatekeeping power over third-party app developers  
20 through arbitrary and unaccountable enforcement of Play Store policies, which then  
21 protect the dominance of Google’s own services and stifles rivals. For example, one  
22 mobile app “Callsome” was banned from the Google Play store for “Ad Policy”  
23 violations only to learn later that an identical product was able to stay and thrive in  
24 the Play Store. Callsome believes it was banned because of its partnership with  
25 SmartApp, which at the time was widely considered to be a nascent but rising rival  
26 to Google in the Russian market.

1           **C.    Google’s Willful Acquisition and Maintenance of its Monopoly in**  
2                                   **the Android Mobile App Market**

3           31.    Google maintains a monopoly in the Android Mobile App Market and is  
4           able to charge supracompetitive prices for mobile app and in-app purchases. Google  
5           uses anticompetitive covenants in Google’s Mobile Application Distribution  
6           Agreement (“MADA”), requiring OEMs to license the entire suite of Google  
7           applications and services in order to also license the Android OS. Google also  
8           requires OEMS to pre-install the Google Play Store on its home page. If OEM refuse  
9           these restrictive terms and conditions, they lose access to the Android OS.

10          32.    As a result of the MADA terms and conditions, Google has successfully  
11          prevented competition from its rivals in the Android Mobile App Market. Google’s  
12          MADA agreements also allow Google to charge supracompetitive prices for mobile  
13          app and in-app purchases, harming Plaintiff and Class Members by limiting  
14          consumer choice.

15          33.    Similarly, Google uses its Developer Distribution Agreement (“DDA”) to  
16          contractually restrict competition in the Android Mobile App Market. Amongst  
17          other therms, the DDA mandated that developers comply with Google’s Developer  
18          Program Policies, including using Google’s proprietary in-app billing for in-app game  
19          payments, as well as certain other digital in-app purchases. The DDA also requires  
20          that developers “may not use Google Play to distribute or make available any  
21          Product that has a purpose that facilitates the distribution of software applications  
22          and games for use on Android devices outside of Google Play.” Google has the right  
23          to remove any Android app it believes has violated any portion of the DDA.

24          **V.    ANTITRUST INJURY**

25          34.    Plaintiff and Class Members purchased Android mobile apps and in-  
26          app digital content directly from Google through the Google Play Store. Without the  
27          unlawful restraints described above, Plaintiff and Class Members would not have to  
28          pay supra competitive price for mobile apps and in-app purchases. Google’s

1 anticompetitive practices also stalled, limited or foreclosed competition and  
2 innovation in the Android Mobile App Market.

3 **VI. MARKET DEFINITION**

4 35. The relevant product market is the market for Android mobile apps and  
5 in-app purchases. The relevant geographic market for purposes for this action is the  
6 United States and its territories. Google has significant and durable power in this  
7 market, app stores and mobile apps are developed and distributed throughout the  
8 United States, and Google's Play Store is available to Android users throughout the  
9 United States.

10 **VII. TOLLING OF STATUTE OF LIMITATIONS**

11 36. Plaintiff and Class members had no knowledge of Google's  
12 anticompetitive conduct, or of facts sufficient to place them on inquiry notice of the  
13 claims asserted herein, during the Class period and continuing thereafter, until  
14 October 2020 when the United States House of Representatives published its  
15 Investigation of Competition in Digital Markets and provided details concerning  
16 Google and its conduct.

17 37. Plaintiff and Class members suffered economic loss due to Google's  
18 wrongful exercise of monopoly power. Plaintiff's interactions with Google were  
19 insufficient, however, to discover Google's wrongful conduct.

20 38. Furthermore, no public information was available during the Class  
21 period or thereafter that suggests Google's business activities were done to  
22 monopolize the Android Mobile App Market until the House published the Report of  
23 its investigation against Google.

24 39. Moreover, it was reasonable for Plaintiff and Class members not to  
25 suspect that Defendants were engaging in any unlawful anticompetitive behavior.  
26 Plaintiff and class members are merely consumers of apps and were not active  
27 participants in the market.

1           40.     Plaintiffs allege a continuing course of unlawful conduct by Google,  
2 including conduct within the applicable limitation periods. That conduct has  
3 inflicted continuing and accumulating harm within the applicable statutes of  
4 limitation.

5           41.     For these reasons, the statutes of limitations applicable to Plaintiffs'  
6 and Class members' claims have been tolled with respect to the claims asserted  
7 herein until the House Report about Google became public.

8           42.     Additionally, or alternatively, application of the doctrine of fraudulent  
9 concealment tolled the statutes of limitations on Plaintiff's claims. Plaintiff and  
10 Class members had no knowledge of Google's wrongful acquisition and maintenance  
11 of monopoly power in the relevant market, or of facts sufficient to place them on  
12 inquiry notice of their claims, during the Class period and continuing thereafter. No  
13 information in the public domain or otherwise available to Plaintiffs and Class  
14 members during the Class period suggested that Google had wrongfully acquired a  
15 monopoly or was using its monopoly power to charge supra-competitive prices.

16           43.     In failing to disclose its wrongful monopolization, in addition to denying  
17 it was engaged in such conduct, Google was able to conceal its illicit conduct. In fact,  
18 Google has made public denials to this effect in the United States and to foreign  
19 regulators.

20           44.     After it was revealed that the House was investigating Google's  
21 monopoly, Google denied such conduct. Similarly, in response to recent news reports  
22 of impending antitrust actions against it by federal and state officials for  
23 monopolization, Google stated publicly that competition is flourishing, and  
24 publishers and marketers have enormous choice when that was plainly incorrect.

25           45.     Further, Google's anticompetitive monopoly conduct was inherently  
26 self-concealing because, as Google knew, its disclosure likely would have led to  
27 governmental enforcement activity or civil liability. Google's conduct is subject to  
28 antitrust regulation, so it was reasonable for Plaintiffs and Class members to

1 presume that it was purchasing apps in a competitive market. A reasonable person  
2 under the circumstances would not have had occasion to suspect that apps were  
3 being sold at supra-competitive prices at any time during the Class period.

4 **VIII. CLASS ACTION ALLEGATIONS**

5 46. Plaintiff brings this action both on behalf of himself and as a class  
6 action pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3) on behalf of  
7 the following Class:

8 All persons and entities in the United States that made payment to  
9 Google for a mobile app on the Google Play Store, subscription fees for  
10 a mobile app obtained on the Google Play Store, or app content from a  
11 mobile app downloaded from the Google App Store, from at least as  
12 early as January 1, 2016 through the present (“Class Period”).

13 47. This definition specifically excludes any of the Defendants named  
14 herein, any of the Defendants’ parent companies, subsidiaries, and affiliates, and  
15 any of the Defendants’ officers, directors, management, employees, subsidiaries,  
16 affiliates or agents. Plaintiff reserves the right to expand, modify, or alter the class  
17 definition in response to information learned during discovery.

18 48. This action is properly brought as a class action under Federal Rule of  
19 Civil Procedure 23(a) for the following reasons:

20 a. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** The proposed Class is  
21 so numerous and geographically dispersed that the joinder of all  
22 Class Members is impracticable. While Plaintiff does not know  
23 the exact number and identity of all Class Members, Plaintiff is  
24 informed and believe that there are millions of Class Members.  
25 The precise number of Class Members can be ascertained through  
26 discovery;

27 b. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2)**  
28 **and 23(b)(3)):** There are questions of law and fact common to the

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

proposed class which predominate over any questions that may affect particular Class Members. Such common questions of law and fact include, but are not limited to:

- i. Whether Defendants monopolized the market for Android Mobile Apps at any time during the Class Period;
- ii. Whether Google unlawfully acquired and maintained monopoly power in the relevant market;
- iii. Whether Plaintiff and the other members of the Class were injured by Defendants' conduct and, if so, the determination of the appropriate Class-wide measure of damages;
- iv. Whether Plaintiff and other members of the Class are entitled to, among other things, injunctive relief, and, if so, the nature and extent of such relief;
- v. Whether the alleged conspiracy violated the Sherman Act;
- vi. Whether the alleged conspiracy violated California's antitrust and unfair competition laws;
- vii. Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Class, thereby entitling Plaintiff and the members of the Class to disgorgement of all benefits derived by Defendants;
- viii. Whether Plaintiff and members of the Class had any reason to know or suspect the conspiracy, or any means to discover the conspiracy; and
- ix. Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiff and the members of the Class.

1 c. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are  
2 typical of the claims of the members of the proposed Class.  
3 Plaintiff and the Class have been injured by the same wrongful  
4 practices of Defendants. Plaintiff's claims arise from the same  
5 practices and conduct that give rise to the claims of the Class and  
6 are based on the same legal theories;

7 d. **Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)):**  
8 Plaintiff will fairly and adequately protect the interests of the  
9 Class in that he has no interests antagonistic to those of the other  
10 members of the Class, and Plaintiff has retained attorneys  
11 experienced in antitrust class actions and complex litigation as  
12 counsel;

13 49. This action is properly brought as a class action under Federal Rule of  
14 Civil Procedure 23(b) for the following reasons:

15 a. **Declaratory and Injunctive Relief (Fed. R. C. P. 23(b)(2)):**  
16 Certification under Rule 23(b)(2) is warranted because Defendants  
17 acted or refused to act on grounds generally applicable to the Class,  
18 thereby making appropriate final injunctive, declaratory, or other  
19 appropriate equitable relief with respect to the Class as a whole.

20 b. **Superiority (Fed. R. Civ. P. 23(b)(3)):** Certification under Rule  
21 23(b)(3) is appropriate because questions of law or fact common to  
22 members of the Class predominate over any questions affecting only  
23 individual members, and class action treatment is superior to the  
24 other available methods for the fair and efficient adjudication of this  
25 controversy.

26 c. The proposed Class is ascertainable and there is a well-defined  
27 community of interest in the questions of law or fact alleged herein  
28

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

since the rights of each proposed Class Member were infringed or violated in the same fashion;

50. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a. Given the size of individual Class Member’s claims and the expense of litigating those claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- b. This action will promote an orderly and expeditious administration and adjudication of the proposed Class claims, economies of time, effort and resources will be fostered, and uniformity of decisions will be insured;
- c. Without a class action, Class Members will suffer damages, and Defendant’s violations of law will proceed without remedy while Defendants reaped and retained the substantial proceeds of their wrongful conduct; and
- d. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.



1 **IX. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of Sherman Act – Monopolization**

4 **(15 U.S.C. § 2)**

5 51. Plaintiff hereby repeats and incorporates by reference each preceding  
6 paragraph as if fully stated herein.

7 52. Plaintiff brings this claim on his own behalf and on behalf of each  
8 member of the Class described above.

9 53. The relevant market is the U.S. market for mobile apps and in-app  
10 purchases sold in the Android Mobile App Market.

11 54. Google has gained and maintains monopoly power in the relevant  
12 market by improper and unlawful means. More specifically, Google has willfully  
13 acquired and maintained such power by coercing the purchase of Android Mobile  
14 Apps and in-app products and services at artificial prices and by its patently  
15 exclusionary conduct, including its refusal to allow rival app stores to be accessed  
16 through the Google Play Store and implementing significant frictions designed to  
17 steer consumers away from sideloading third-party app stores. Consumers must use  
18 the Android Mobile App Market to obtain Android mobile apps and in-app  
19 purchases.

20 55. For the reasons stated herein, substantial barriers to entry exist in the  
21 relevant market.

22 56. Google has the power to exclude competition in the relevant market,  
23 and it has used that power, including by way of its unlawful practices in restraint of  
24 trade as described herein, to maintain and expand its monopoly power in that  
25 market.

26 57. Google's conduct as described herein, including its unlawful practices in  
27 restraint of trade, is exclusionary vis-à-vis its rival app stores in the U.S. market for  
28 Android mobile apps and in-app purchases.

1           58. Google has behaved as alleged herein in an attempt to obtain a  
2 monopoly in the U.S. market for Android mobile apps and in-app purchases, with  
3 the effect being that competition is foreclosed, innovation is stifled, and consumer  
4 choice is gravely diminished. Additionally, Google has abused its market power by  
5 charging supra-competitive 30 percent commission on sales of paid apps and a 30  
6 percent fee for in-app purchases. Further, Google's actions have depressed output  
7 and stifled innovation and options for consumers as alleged herein.

8           59. There is no business necessity or other pro-competitive justification for  
9 Google's conduct.

10           60. As a direct and proximate cause of Google's conduct, Plaintiff and  
11 members of the Class have suffered antitrust injury. Plaintiff and the Class  
12 members paid significantly higher prices for Android mobile apps and in-app  
13 purchases than they would have but for Google's unlawful conduct. That conduct  
14 also deprived Plaintiff and Class members of improved quality and innovation in the  
15 relevant markets.

16           61. Plaintiff is inclined to continue to purchase Android mobile apps and in-  
17 app purchases in the future because of his investment in the mobile device  
18 containing the Android OS.

19           62. Plaintiff and members of the Class are entitled to damages, including  
20 treble damages, sustained because of Google's monopolistic acts and practices.

21           63. Plaintiff and members of the Class are entitled to equitable relief as  
22 appropriate to cure Google's monopoly conduct and restore competition in the  
23 relevant market. Members of the Class are regular users of the Android Mobile App  
24 market and will continue to purchase such apps and in-app products and services  
25 and suffer further injury if Google's monopoly is not ended.

26           64. Plaintiff and the Class also are entitled to injunctive relief to prevent  
27 Google from persisting in its unlawful, inequitable, and unjustified behavior to their  
28 detriment, with such an injunction at a minimum prohibiting Google from

1 continuing to: charge supra-competitive commission on sales of paid apps and a  
2 supra-competitive percent fee for in-app purchases. *See, e.g.*, 15 U.S.C. § 26.

3 **SECOND CAUSE OF ACTION**

4 **Violation of Sherman Act – Attempted Monopolization**

5 **(15 U.S.C. § 2)**

6 65. Plaintiff hereby repeats and incorporates by reference each preceding  
7 paragraph as if fully stated herein.

8 66. Plaintiff brings this claim on his own behalf and on behalf of each  
9 member of the Class described above.

10 67. The relevant market is the U.S. market for mobile apps and in-app  
11 purchases sold in the Android Mobile App Market.

12 68. Google has attempted to monopolize the U.S. market for Android  
13 mobile apps. More specifically, Google has willfully acquired and maintained market  
14 power by its patently exclusionary conduct, including its refusal to allow rival app  
15 stores to be accessed through the Google Play Store and implementing significant  
16 frictions designed to steer consumers away from sideloading third-party app stores.  
17 Consumers must use the Android Mobile App Market to obtain Android mobile apps  
18 and in-app purchases.

19 69. Google's anticompetitive conduct has created a dangerous probability  
20 that it will achieve monopoly power in the U.S. market for Android mobile apps and  
21 in-app purchases.

22 70. Google has a specific intent to achieve monopoly power in the U.S.  
23 market for Android mobile apps and in-app purchases. Now, and if its unlawful  
24 restraints are not checked, Google has a dangerous probably of success in the  
25 relevant market as defined by the Plaintiffs.

26 71. Google has the power to exclude competition in the U.S. market for  
27 Android mobile apps and in-app purchases, and it has used that power, including by  
28

1 way of its unlawful practices in restraint of trade as described herein, in an attempt  
2 to monopolize that relevant market.

3 72. Google's conduct as described herein, including its unlawful practices in  
4 restraint of trade, is exclusionary vis-à-vis its rival app stores in the U.S. market for  
5 Android mobile apps and in-app purchases.

6 73. Google has behaved as alleged herein in an attempt to obtain a  
7 monopoly in the U.S. market for Android mobile apps and in-app purchases, with  
8 the effect being that competition is foreclosed, innovation is stifled, and consumer  
9 choice is gravely diminished. Additionally, Google has abused its market power by  
10 charging supra-competitive 30 percent commission on sales of paid apps and a 30  
11 percent fee for in-app purchases. Further, Google's actions have depressed output  
12 and stifled innovation and options for consumers as alleged herein.

13 74. There is no business necessity or other pro-competitive justification for  
14 Google's conduct.

15 75. Plaintiff and the Class have been injured, and will continue to be  
16 injured, in their property as a result of Google's conduct, including by way of  
17 overpaying for Android mobile apps and in-app purchases.

18 76. Plaintiff is inclined to continue to purchase Android mobile apps and in-  
19 app purchases in the future because of his investment in the mobile device  
20 containing the Android OS.

21 77. Plaintiff and the Class also are entitled to injunctive relief to prevent  
22 Google from persisting in its unlawful, inequitable, and unjustified behavior to their  
23 detriment, with such an injunction at a minimum prohibiting Google from  
24 continuing to: charge supra-competitive commission on sales of paid apps and a  
25 supra-competitive percent fee for in-app purchases. *See, e.g.*, 15 U.S.C. § 26.  
26  
27  
28

**THIRD CAUSE OF ACTION**

**Violation of the California Unfair Competition Law  
(Cal. Business and Professions Code § 17200, *et seq.*)**

1  
2  
3  
4 78. Plaintiff hereby repeats and incorporates by reference each preceding  
5 paragraph as if fully stated herein.

6 79. Google’s conduct is unlawful in violation of California’s Unfair  
7 Competition Law (“UCL”) because it violates Section 2 of the Sherman Act, 15  
8 U.S.C. § 2.

9 80. Google has engaged in unfair business practices through the conduct  
10 alleged herein, which has restrained competition. Google’s conduct is unfair and in  
11 violation of the UCL because it violates California’s clearly established public policy  
12 forbidding monopolistic acts. Google wrongfully acquired and unlawfully maintained  
13 monopoly power in the relevant market through the conduct alleged herein,  
14 including by leveraging its monopoly power in the Android Mobile App market to  
15 coerce the purchase of Android Mobile Apps and in-app products and services at  
16 artificial prices.

17 81. Google’s practices also are unlawful in violation of the UCL because  
18 they offend public policy; are immoral, unethical, oppressive, outrageous,  
19 unscrupulous, and substantially injurious; and caused substantial harm, including  
20 in the form of artificially inflated prices, that greatly outweighs any possible utility  
21 from the practices.

22 82. Google’s conduct actually and proximately caused Plaintiff and Class  
23 members to lose money or property. On behalf of the Class, Plaintiff seeks damages,  
24 injunctive relief, and reasonable attorneys’ fees and costs, as well as any other relief  
25 the Court may deem just or proper.  
26  
27  
28

1 **X. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests that the Court enter judgment on his  
3 behalf and on behalf of the Class defined herein, by adjudging and decreeing that:

4 1. That the Court determine that this action may be maintained as a class  
5 action under Federal Rule of Civil Procedure 23(b)(2), (b)(3), and (c)(4) that Plaintiff  
6 be certified as Class representative, and Plaintiff's counsel be appointed as counsel  
7 for the Class;

8 2. That the unlawful contract, combination, or conspiracy alleged be  
9 adjudged and decreed to be an unreasonable restraint of trade or commerce in  
10 violation of Section 2 of the Sherman Act;

11 3. That Defendants have violated the UCL by engaging in conduct that  
12 constitutes unlawful, unfair and fraudulent business practices;

13 4. That Plaintiff and the Class have been injured in their business and  
14 property as a result of Defendants' violations;

15 5. That Plaintiff and the Class recover damages, as provided by law,  
16 determined to have been sustained as to each of them, in an amount to be trebled in  
17 accordance with the antitrust laws, and that judgment be entered against Defendants  
18 on behalf of Plaintiff and the Class;

19 6. Plaintiff and the Class recover their costs of suit, including reasonable  
20 attorneys' fees, costs, and expenses of the lawsuit, as provided by law;

21 7. That Defendants, their subsidiaries, affiliates, successors, transferees,  
22 assignees and the respective officers, directors, partners, agents, and employees  
23 thereof and all other persons acting or claiming to act on their behalf be permanently  
24 enjoined and restrained from continuing and maintaining the combination,  
25 conspiracy, or agreement alleged herein;

26 8. That Plaintiff and the Class be awarded pre-judgment and post-  
27 judgment interest, and that such interest be awarded at the highest legal rate from  
28 and after the date of service of the initial complaint in this action;

