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15   **UNITED STATES DISTRICT COURT**
                    NORTHERN DISTRICT OF CALIFORNIA
16   **OAKLAND DIVISION**

17

18   EPIC GAMES, INC.,   No. 4:20-CV-05640-YGR

19   Plaintiff,   **DECLARATION OF TIMOTHY**
                                                 SWEENEY IN SUPPORT OF
20   vs.   **PLAINTIFF EPIC GAMES, INC.'S**
                                                 MOTION FOR A PRELIMINARY
21   APPLE INC.,   **INJUNCTION**

22   Defendant.   Date: September 28, 2020 at 9:30 a.m. (via
                                                 Zoom Platform)
23
                                                 Courtroom: 1, 4th Floor
24
                                                 Judge: Hon. Yvonne Gonzalez Rogers
25

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28

DECLARATION OF TIMOTHY SWEENEY   CASE NO. 4:20-CV-05640-YGR

1 I, Timothy Sweeney, declare as follows:

2   1.   I am the founder and Chief Executive Officer of Epic Games, Inc. ("Epic"), the

3 plaintiff in this action. I submit this declaration in support of Epic's Motion for a Preliminary

4 Injunction. The contents of this declaration are based on my personal knowledge. If called as a

5 witness, I could and would competently testify thereto.

6 **Epic Games**

7   2.   I founded Epic in 1991 in my parents' basement. Over the years, Epic has

8 developed a number of popular videogames, as well as a software suite called *Unreal Engine* that

9 allows other developers to create three-dimensional content for use in games, movies, television,

10 architecture, art, virtual reality experiences, and other applications. Epic also operates the Epic

11 Games Store, a digital storefront for computer games played on personal computers running the

12 Windows operating system and Mac operating system. In addition, Epic offers Epic Online

13 Services, a free software development kit ("SDK") that provides developers with a suite of

14 services for running online cross-platform games.

15 ***Fortnite***

16   3.   Currently, Epic's most popular and successful game is *Fortnite*. As of June 2020,

17 *Fortnite* topped 350 million registered users around the world. *Fortnite* is an online videogame

18 and social entertainment space. It is available for Microsoft Windows, macOS, PlayStation 4,

19 Xbox One, and Nintendo Switch. In addition, a mobile version of *Fortnite* was released on

20 Apple's mobile operating system ("iOS") in April 2018 and on the Android mobile operating

21 system in October 2018. More than 116 million registered users have accessed *Fortnite* on an

22 iOS device—more than any other platform. They have spent more than 2.86 billion hours in the

23 app. From the time *Fortnite* was launched on iOS through August 13, 2020, it averaged 2.5

24 million daily iOS players, representing nearly 10% of *Fortnite*'s total average daily players. 63%

25 of *Fortnite* users on iOS access *Fortnite* only on iOS.

26   4.   *Fortnite* includes three main game modes: (i) *Battle Royale*, an elimination and

27 survival match involving up to 100 players; (ii) *Save the World*, a mode that involves up to four

28 players teaming up against non-playable computer characters; and (iii) *Creative*, where players

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can build custom structures on a private island for use in other game modes. In *Fortnite*, players can create new environments, dance, chat, socialize, and even attend concerts, video premieres, and film screenings.

5.   *Fortnite* is one of the world's largest event venues. Travis Scott's in-game concert in April 2020 drew over 2 million iOS users. Three of Christopher Nolan's films were virtually screened in *Fortnite* in June 2020. Exclusive episodes of ESPN's *The Ocho* and the Discovery Channel's *Tiger Shark King* aired on August 8 and 10, 2020, respectively. In July 2020, *Fortnite* players could attend airings of *We the People*, a series of discussions on racial equity and voter suppression in America. *Fortnite* is more than just a game. *Fortnite* is a destination where friends meet online to hangout, socialize, build worlds, and share experiences.

6.   *Battle Royale* is the most popular *Fortnite* gameplay mode. *Battle Royale* storylines and gameplay evolve over time, as new chapters and seasons are released periodically. A season typically lasts around ten weeks and is a subset of a larger chapter. The current *Fortnite* iteration is Chapter 2, Season 4, which was released on August 27, 2020.

7.   Although the *Battle Royale* gameplay mode is available to download and play free of charge, users can make a range of in-app purchases in *Fortnite* for digital content used in the app, including digital avatars, costumes, dances, and other cosmetic items. From a business perspective, in-app purchasing is an important part of the *Fortnite* model because it is seamless for users. If users had to leave the app to purchase digital content, they would be much less likely to do so. *Fortnite* has two primary methods for in-app purchases: a subscription model, called a "Battle Pass", and à la carte purchases. A Battle Pass lasts for the duration of a season and enables players to unlock a wide variety of items, as well as new gameplay features called "challenges". Some *Fortnite* content is purchased with real-world currency, but most purchases are made with V-Bucks, an in-game currency. The average iOS player spends roughly double what the average Android player spends on in-app purchases in *Fortnite*.

8.   Most gameplay in *Fortnite* is multi-player. People can play online with friends and family, with teams, or with other gamers of similar skill levels with whom they are matched. *Fortnite* offers cross-platform play. That means that players using different videogaming

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systems—including personal computers, dedicated gaming consoles, and mobile devices like smartphones and tablets—can play together in the same online space. Since September 2018, *Fortnite* cross-platform play has been available across Sony's PlayStation 4, Microsoft's Xbox One, the Nintendo Switch, Windows personal computers, Mac personal computers, and certain Android and (when accessible) iOS mobile devices. Epic pioneered cross-platform play for the industry by persuading Sony, Microsoft, and Nintendo to erase the artificial barriers between players on different gaming platforms, making *Fortnite* the first game to achieve full cross-play functionality across mobile, Windows and Mac personal computers, and all three major consoles.

9.   For players to play together online, they must have the same "version" of *Fortnite* software. Successive versions introduce new gameplay and content, both at the beginning of a new season and during the course of a season. For example, *Fortnite* Chapter 1, Season 4 introduced shopping carts as the first land vehicles available in the game, which then ceased to be available at the end of Season 8. Chapter 2 elevated aquatic gameplay by introducing game maps that included rivers and navigation by boat. By Chapter 2, Season 3, portions of game maps were flooded, the superhero Aquaman was added as a character, and sharks were introduced in challenges and (to players' delight) as methods of transportation. The current version of *Fortnite* (Version 14.00) launched a fully *Marvel*-themed season—the largest crossover event that *Fortnite* has ever seen, complete with the ability for players to unlock the likes of Iron Man, Thor, and Mystique as characters. These updated versions are critical for *Fortnite* to provide users with a dynamic, ever-evolving experience, and to maintain users' enjoyment and engagement. Having a purely static environment without these updates would materially degrade the user experience.

Epic Games Store and Epic Online Services

10.   For Windows and Mac personal computer users, Epic offers *Fortnite* and other applications for download through its online storefront Epic Games Store ("EGS"). Epic launched EGS in December 2018 as an online digital storefront for Epic's own games as well as third-party games. Today, EGS has over 160 million registered users, over 200 third-party developers, and nearly 300 third-party games. EGS currently competes with other online distributors of personal computer games, such as Steam and GOG. EGS provides developers

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with a variety of complementary services and charges developers a 12% fee on the sale of games and applications through EGS. Epic also charges a 12% fee for in-game purchases that are processed by Epic, but Epic does not require developers that distribute their games through EGS to use Epic's in-game purchasing system. Developers are free to process in-game purchases with their own payment processing system or to make use of third-party payment processors. Epic collects no fees from developers that (1) distribute their games for free through EGS and (2) do not use Epic's in-game payment processing. For example, *Magic: The Gathering Arena* is available to download for free on EGS and does not use Epic's payment processing services for in-game payments. While Epic therefore earns no direct revenues from hosting *Magic: The Gathering Arena* on EGS, Epic still benefits from including the game as part of its curated set of offerings through EGS by bringing more players to the store. Epic also benefits from creating relationships with new developers who use Epic's distribution avenues.

11.   Epic also offers a suite of backend online gaming services to third-party game developers for free through Epic Online Services ("EOS"). EOS includes tools to track in-game analytics, provide real-time player stats and leaderboards, and allow players to see when their friends are online on any platform to help them stay connected. Although Epic does not collect any fees from developers that use EOS, Epic still benefits because EOS encourages wider adoption of all of Epic's offerings and makes cross-play and other open and interconnected online features more accessible to all users.

Attempts To Negotiate with Apple

12.   The only way Apple allows iOS users to access Epic's games, or any other developers' games, is through the App Store. Apple's rules block alternate software storefronts from its official App Store and also prohibit web browsers on iOS from directly downloading consumer apps or app stores through the Internet. Apple has created rules and restrictions that prevent on iOS devices the open distribution of software that is currently available on personal computers, including Apple's own Mac computers. Under these rules, Epic is unable to offer EGS to iOS users at all.

13.   In addition to restricting the open distribution of software on iOS devices, Apple

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1   restricts the digital content purchase options for software on iOS devices. Users of Epic's games

2   on iOS who wish to purchase digital content are required to use Apple's In-App Purchase

3   ("IAP"), which imposes a 30% tax on such transactions. Moreover, Apple restricts Epic's control

4   over the customer service relationship—Epic cannot directly refund players for App Store

5   purchases and players are required to ask Apple for a refund.

6   14.   On June 30, 2020, I wrote to Apple's senior leadership team asking for Apple to

7   allow Epic to provide a competing app store and competing payment processing, and expressed

8   the wish that Apple "also make these options equally available to all iOS developers in order to

9   make software sales and distribution on the iOS platform as open and competitive as it is on

10 personal computers". In that email, I explained that providing these options to iOS device users

11 would allow consumers "an opportunity to pay less for digital products and developers would

12 earn more from their sales". Attached hereto as **Exhibit A** is a true and correct copy of my June

13 30, 2020 email.

14   15.   On July 10, 2020, Apple's legal team sent a response rejecting my requests.

15 Attached hereto as **Exhibit B** is a true and correct copy of that response.

16   16.   On July 17, 2020, I again wrote to Apple, expressing my continued disagreement

17 with Apple's policies and practices and stating that "[i]f Apple someday chooses to return to its

18 roots building open platforms in which consumers have freedom to install software from sources

19 of their choosing, and developers can reach consumers and do business directly without

20 intermediation, then Epic will once again be an ardent supporter of Apple". I received no further

21 response from Apple. Attached hereto as **Exhibit C** is a true and correct copy of my July 17,

22 2020 email.

23   17.   Given Apple's refusal to change its policies, Epic took a stand against Apple to

24 demonstrate the harms caused by Apple's restrictions. On the morning of August 13, 2020, I

25 informed Apple that Epic would be launching Epic direct payment in *Fortnite* on iOS, and

26 expressed Epic's hope that Apple would "reflect on its platform restrictions and begin to make

27 historic changes that bring to the world's billion iOS consumers the rights and freedoms enjoyed

28 on the world's leading open computing platforms including Windows and macOS". Attached

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hereto as **Exhibit D** is a true and correct copy of my August 13, 2020 email.

18.   Later on August 13, 2020, Epic announced a 20% price reduction for in-app purchases on all platforms, including but not limited to iOS. At the same time, as described in more detail in the Declaration of Andrew Grant, dated September 4, 2020 (the "Grant Declaration"), Epic introduced the option for *Fortnite* players on iOS to make in-app purchases using Epic's payment system. iOS users looking to make purchases within *Fortnite* were given a choice, as shown in the below screenshot of the in-game payment menu:
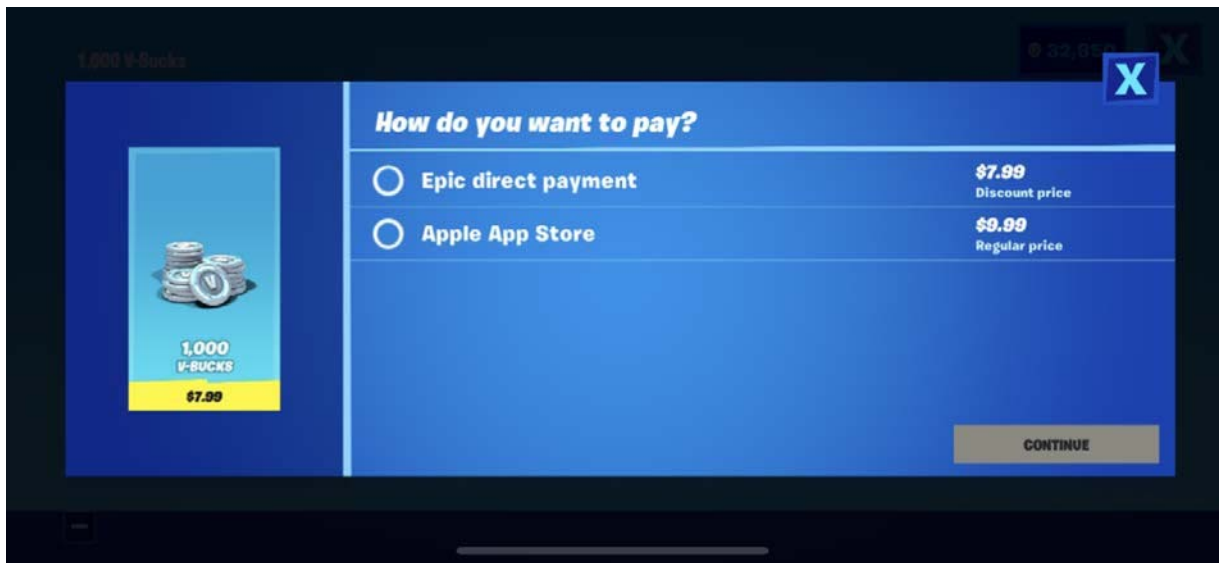
19.   Players could continue to make their purchases using Apple's IAP, in which case they would pay the higher prices, or they could use Epic's direct pay option and pay the new lower prices.

Apple's Retaliation

20.   In retaliation for Epic making this lower-cost option available to users, on August 13, 2020, at approximately 11:19 a.m. Pacific time, Apple removed *Fortnite* from the App Store. Since that time, new users have been unable to download the app on iOS devices, and iOS users who have already downloaded prior versions of the app have not received subsequent updates to *Fortnite* (either automatically or by searching the App Store for the update). From August 13 to August 27, 2020 (essentially the period during which users could choose between Epic's direct pay option and Apple's IAP), 53.4% of iOS *Fortnite* players who made an in-app purchase chose to use Epic's direct payment, while 46.6% continued to use only Apple's IAP.

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21.   Apple's actions have "broken" *Fortnite* for millions of existing players. Epic typically releases updates to *Fortnite* multiple times every month, but with *Fortnite* out of the App Store, existing iOS users are unable to update the game. As detailed in the Grant Declaration, Apple rejected Epic's submission of the *Fortnite* build for the new season on August 26, 2020. On August 28, 2020, Apple terminated the Epic account in Apple's Developer Program through which *Fortnite* was submitted to the App Store, meaning that *Fortnite* and Epic's other apps registered under the terminated account are no longer available on iOS for downloading by new users, for downloading by existing players who had deleted the app from their device, or for updating. Apple's termination notice stated that Apple would deny Epic's "reapplication to the Apple Developer Program for at least a year", which will prevent Epic from continuing to develop *Fortnite* and its other apps registered under the terminated account for iOS during that time. (Grant Decl., Ex. H.)

22.   As a result, all existing iOS users of *Fortnite* are now stuck playing an outdated version of the game. Because iOS users can no longer update the game, they cannot update to the new season, which was released on August 27, 2020. Daily active *Fortnite* users on iOS have declined by over 60% since Apple removed *Fortnite* from the App Store. Not only that, but the average hours per week spent by iOS users in *Fortnite* have also declined significantly. Due to Apple's actions, Epic is unable to ensure continued support for *Fortnite* on macOS, and thus macOS users likewise have lost the ability to download the latest *Battle Royale* season. iOS and macOS users are now unable to play *Fortnite* with other players who have the current version and new season available on other platforms. The millions of people who play *Fortnite* on iOS and macOS devices every day are unable to play with their friends and family who use other platforms—and the millions of others who play on other platforms are deprived of the ability to interact through *Fortnite* with players on iOS and macOS devices. Likewise, they will not be able to attend future concerts, movie nights, or other social events in *Fortnite* that Epic has planned. And existing iOS users who previously deleted the app are unable to play at all.

23.   Much of the joy in *Fortnite* comes from interacting with other people in the virtual world. *Fortnite* connects players from around the globe in a social experience that, for many,

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1   could not be replicated outside of the app, where distance and other difficulties keep people apart.

2   *Fortnite* is a forum for friends and family to connect and play, to build and create together, and to

3   share cultural experiences. Apple's actions have closed this social gathering space used by many

4   people. The angry outcry in response to Apple's actions is causing serious harm to Epic's

5   reputation and goodwill among its users. In the entertainment software industry, delayed releases

6   or mishandled launches of games often lead to criticism of the developer and/or publisher of the

7   software. What Apple has done here is much worse. Millions of people who were playing

8   *Fortnite* on iOS and macOS devices are now suddenly unable to continue enjoying the game the

9   way they had been. Apple's retaliation against Epic for giving players a choice of how they want

10   to pay, and the option to pay less, is causing a massive disruption to Epic's player base that will

11   only get worse as time goes on.

12   24.   Moreover, Apple's retaliation and the resulting loss of millions of iOS and macOS

13   users threatens to stunt *Fortnite*'s continued evolution from a social videogame into a more

14   immersive and varied social space. One of the factors that makes *Fortnite* so special is its

15   groundbreaking ability to provide a forum for a wide variety of virtual social experiences such as

16   concerts, movie nights, and social and political discussions all in a single, freely accessible world.

17   In the future, Epic plans to offer many more events and new features in *Fortnite*, with the ultimate

18   goal of creating the *Fortnite Metaverse*, a robust real-time, three-dimensional social medium

19   complete with its own economy, where people will be able to create and engage in any number of

20   shared experiences. As more and more people use their mobile devices as a primary tool for

21   connecting and socializing with other people, however, the vitality of *Fortnite* as a social space

22   will increasingly depend on access for mobile users.

23   25.   In the short time since Apple's retaliatory action, Epic has received numerous

24   complaints through its user support ticket system regarding Apple's removal of *Fortnite* from the

25   App Store. Attached hereto as **Exhibit E** is a true and correct copy of a set of user support tickets

26   directed to Epic's customer support team regarding Apple's removal of *Fortnite* from the App

27   Store (the names and usernames of the users submitting these support tickets have been redacted

28   to protect customer privacy).

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1 26. In addition, I have personally received numerous complaints regarding Apple's

2 removal of *Fortnite* from the App Store. Attached hereto as **Exhibit F** is a true and correct copy

3 of a set of customer emails sent to me regarding Apple's removal of *Fortnite* from the App Store

4 (the names and email addresses of the users submitting these complaints have been redacted to

5 protect customer privacy).

6 27. There is a significant risk that frustrated iOS users driven away from *Fortnite* due

7 to Apple's actions will never return to the app. There are a number of competing free-to-play

8 battle royale games such as *PlayerUnknown's Battlegrounds* ("*PUBG*") and Activision's *Call of*

9 *Duty: Warzone* that remain available on the App Store, and which iOS users may turn to instead.

10 ***Unreal Engine***

11 28. In addition to terminating Epic's developer account for at least a year and

12 removing *Fortnite* and Epic's other apps registered under that account from the App Store, Apple

13 is also retaliating against a separate part of Epic's business—*Unreal Engine*.

14 29. First created in 1998, *Unreal Engine* is a software suite available to third-party

15 developers to create three-dimensional and immersive digital content for use in games and other

16 applications. *Unreal Engine* users also enjoy free access to products and services developed by

17 Epic affiliates, including Quixel Megascans, an online scan library of photorealistic three-

18 dimensional content, and Twinmotion architectural visualization tools. Epic also offers the

19 *Unreal Engine* Marketplace, an e-commerce platform through which developers can create and

20 sell art, animation, textures, and other assets to use with *Unreal Engine* projects.

21 30. Millions of developers use *Unreal Engine*. Popular videogames that rely on

22 *Unreal Engine* include *Fortnite*, *PUBG*, *Minecraft Dungeons*, *Rocket League*, *Batman*: *Arkham*

23 *Series*, *Star Wars Jedi: Fallen Order*, *Mortal Kombat*, *Street Fighter V*, *Final Fantasy VII*

24 *Remake*, *Tony Hawk 1-2 Remastered*, *Bioshock*, *Borderlands*, *Infinity Blade*, *Mass Effect*, *Tom*

25 *Clancy's Rainbow Six*, *Unreal Tournament*, and *Gears of War 4*, among others. These games are

26 played by hundreds of millions of people around the world. *PUBG* alone has hundreds of

27 millions of users on Android and iOS mobile devices.

28 31. *Unreal Engine* is also used far beyond the realm of videogames. Developers use it

<div align="center">10</div>

to make digital content for a wide range of commercial uses, including architecture projects, film & television production, medical training, and more. *Unreal Engine* received its first Emmy in 2018 for its contribution to televised broadcasts such as the 2018 Winter Olympics, Super Bowl LII, and numerous e-sports tournaments. Since 2016, *Unreal Engine* has been used in more than 100 film and television productions. For example, *The Mandalorian*—Disney's television series in the *Star Wars* franchise—was filmed on a stage set within a huge oval LED display. The exteriors and interiors—virtually every background and set—were created in *Unreal Engine* and displayed in real time behind the actors. Similarly, the popular HBO series *Westworld* turned to *Unreal Engine* to develop many of its visual effects. Car makers, including Audi and Ford, have used *Unreal Engine* for a variety of uses including automotive design and engineering, as well as developing digital showrooms in which customers can configure their vehicles with high-fidelity visuals. In aerospace, NASA and Boeing use *Unreal Engine* to train astronauts using virtual reality, and Gulfstream visualizes its jets for its employees and clients. *Unreal Engine* has even helped brain surgeons train for and perform some of the most intricate and challenging aspects of brain surgeries by allowing for detailed real-time digital anatomy simulations.

32.   Open access to *Unreal Engine* is a core part of Epic's business philosophy. *Unreal Engine* is free to use for non-commercial purposes, and anyone can download *Unreal Engine* and learn to create their own projects. For developers who use *Unreal Engine* to develop and sell their games or other projects commercially, Epic typically collects a 5% royalty on revenue generated after the developer reaches $1 million in gross sales. Developers then submit a royalty report and pay any royalties due to Epic on a quarterly basis. Alternatively, customers can negotiate custom or royalty-free licenses with Epic.

33.   *Unreal Engine* is uniquely valuable to developers given the breadth of its cross-platform capabilities. Historically, *Unreal Engine 3* (the previous iteration of the engine, which was released in 2004) supported software developed to run on Windows personal computers, PlayStation 3, and Xbox 360. In 2010, Epic expanded *Unreal Engine*'s capabilities to support the iOS and Android platforms as well, allowing developers to offer their *Unreal*-powered applications on players' smartphone and tablet devices. Since then, Epic has continued to

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develop and expand *Unreal Engine*'s platform offerings, releasing regular updates to *Unreal Engine* to add new features and enhanced developer tools. The current iteration of the engine, *Unreal Engine 4*, was initially launched in 2014 and has since gone through 25 update releases. Today, developers can use *Unreal Engine* to develop games and other software for Windows personal computers, PlayStation 4, PlayStation 5, Xbox One, Xbox Series X, Nintendo Switch, Google Stadia, Mac personal computers, iOS mobile devices, and Android OS mobile devices.

34.   In 2014, Guinness World Records named *Unreal Engine* the most successful videogame engine in history.

Apple's Further Retaliation

35.   As described in more detail in the Grant Declaration, at 12:04 a.m. Pacific time on August 14, 2020, Apple notified Epic that its "membership in the Apple Developer Program is suspended" and that its "Apple Developer Program Account will be terminated" within 14 days unless Epic takes certain steps that Apple requires. Among other things, Apple stated that *Fortnite* violated the Apple Developer Program License Agreement "by allowing end users to purchase digital items within the app without using the In-App Purchase API. This payment model is not authorized under the App Store Review Guidelines, and must be removed from your app in order to cure this breach." (Grant Decl., Ex. C.)

36.   In the August 14 notice to Epic, Apple further stated that "[i]f your membership is terminated, you may no longer submit apps to the App Store, and your apps still available for distribution will be removed".

37.   But Apple's August 14 notice was not even limited to Epic's iOS apps. It said that upon termination from the Apple Developer Program, Epic "will also lose access to the following programs, technologies, and capabilities" and gave an extensive list. That list mentioned not just tools and capabilities related to apps for the App Store but also expressly included matters related to the *Unreal Engine*, including "engineering efforts to improve hardware and software performance of Unreal Engine on Mac and iOS hardware".

38.   As of now, Apple has not terminated Epic's affiliates' Developer Program accounts. However, if Apple is permitted to terminate Epic's affiliates' Developer Program

accounts, the consequences will be devastating. According to Apple's August 14 notice, upon termination, Epic would lose access to the widely available SDKs, application programming interfaces ("APIs"), and other developer tools necessary to develop software for use on iOS and macOS. As described in more detail in the Declaration of Nicholas Penwarden, dated September 4, 2020, without access to these SDKs, APIs, and other tools, Epic would be unable to develop future updates to the *Unreal Engine* for use on iOS and macOS, and would thus be forced to discontinue *Unreal Engine* for iOS and macOS.

39.   This would be an existential threat to the *Unreal Engine*. Many game developers rely on engines like the *Unreal Engine* to develop commercially successful games that will run across a wide range of gaming platforms, and over many generations and new versions of the game. Therefore, one key factor that developers consider when choosing an engine is the range of platforms the engine is compatible with, and the likelihood that the underlying engine they select will continue to support the major gaming platforms such as Windows and Mac computers, Xbox and PlayStation gaming consoles, and iOS and Android devices. An engine that cannot support Apple's platforms will not be a viable option for any developer that wants its software to be made available to the hundreds of millions of active iOS and macOS users, or even for those developers that want to reserve the possibility of expanding to iOS or macOS in the future.

40.   Epic's business will be harmed as soon as it loses access to Apple's software tools and SDKs. Developers invest considerable time and resources learning to use and to develop games based on *Unreal Engine*, often with the expectation that those games will be supported on Apple's platforms. This is particularly true because the mobile gaming category is substantially larger than computing or console gaming, and mobile remains a high-growth area in the gaming industry. If Epic can no longer develop future updates for the *Unreal Engine* that support iOS and macOS, developers will not choose to use *Unreal Engine* to develop any games or other products for use on Apple devices. The loss of *Unreal Engine*'s ability to support these important platforms will therefore cause irreparable harm to Epic's product offering, as many developers will select a competing engine for their new projects, or for the next versions of their games. In addition, the third-party developers who rely on Epic's engine and support are in jeopardy of

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1   losing the long-term support of Epic and its *Unreal Engine* tools for use in connection with Apple

2   devices.

3   41.   Apple's retaliatory actions to block Epic's ability to continue to develop and

4   support its *Unreal Engine* for iOS and macOS would thus not only harm developers who already

5   use *Unreal Engine*, but it would also cripple the engine's desirability and future commercial

6   viability across all platforms.

7   42.   If Apple terminates Epic's affiliates' Developer Program accounts, Epic will also

8   lose the ability to distribute its *Houseparty* app to iOS users, which would have catastrophic

9   effects on Epic's ability to maintain the user base of this social networking service, which it

10 acquired last year, and further integrate *Houseparty* into Epic's other apps.

11   43.   Apple's August 14 notice, as well as Apple's subsequent rejection notices

12 concerning new builds of *Fortnite* submitted to Apple for review since then, suggested that Apple

13 would not terminate Epic's Developer Program account only if Epic affirmatively submitted a

14 revised version of *Fortnite* that complied with all of Apple's restrictions. That was not and is not

15 an acceptable path for Epic. In Epic's view, too many companies have been forced to accept

16 these restrictions for too long. The restrictions harm consumers, app developers and potential

17 competitors to Apple, and it is time for them to end.

18   Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true

19 and correct and that I executed this declaration on September 4, 2020, in Cary, North Carolina.

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21   *Timothy Sweeney*
        /s/ Timothy Sweeney (Sep 4, 2020 20:47 EDT)

22   Timothy Sweeney

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