

1 Paul J. Riehle (SBN 115199)  
paul.riehle@faegredrinker.com  
2 **FAEGRE DRINKER BIDDLE & REATH LLP**  
Four Embarcadero Center  
3 San Francisco, California 94111  
Telephone: (415) 591-7500  
4 Facsimile: (415) 591-7510

5 Christine A. Varney (*pro hac vice*)  
cvarney@cavath.com  
6 **CRAVATH, SWAINE & MOORE LLP**  
825 Eighth Avenue  
7 New York, New York 10019  
Telephone: (212) 474-1000  
8 Facsimile: (212) 474-3700

9 *Attorneys for Plaintiff Epic Games, Inc.*

10 [Additional counsel on signature page]

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14  
15  
16 **IN RE GOOGLE PLAY STORE**  
**ANTITRUST LITIGATION**

Case No. 3:20-cv-05671-JD  
Case No. 3:21-md-02981-JD

17 THIS DOCUMENT RELATES TO:

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

**PLAINTIFF EPIC GAMES, INC.’S**  
**NOTICE OF MOTION AND MOTION**  
**FOR A PRELIMINARY INJUNCTION**

Date: June 2, 2022 at 10:00 a.m.  
Courtroom: 11, 19th Floor  
Judge: Hon. James Donato

**NOTICE OF MOTION AND MOTION****TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on June 2, 2022, at 10:00 a.m., in the United States District Court for the Northern District of California, before the Honorable James Donato, Plaintiff Epic Games, Inc. (“Epic”) will move this Court pursuant to Federal Rule of Civil Procedure 65 for a Preliminary Injunction restraining Defendants Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte. Limited, and Google Payment Corp. (collectively, “Google”), its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with Google, from removing, de-listing, refusing to list or otherwise making unavailable the app Bandcamp, including rejecting or refusing to distribute any update of such app, from the Google Play Store on the basis that Bandcamp offers in-app payments through means other than Google Play Billing or on any pretextual basis.<sup>1</sup>

This Motion is made on the grounds that: (1) Epic is likely to succeed on the merits of its claims that Google’s conduct violates the Sherman Act, the Cartwright Act and California’s Unfair Competition Law; (2) absent a preliminary injunction, Epic is likely to suffer irreparable harm; (3) the balance of harms tips sharply in Epic’s favor; and (4) the public interest supports an injunction. This Motion is based upon the Complaint in this action, this Notice of Motion and Motion, the Proposed Order Granting Plaintiff’s Motion for a Preliminary Injunction (“Proposed Order”), the Declaration of Steven Allison (“Allison Decl.”) along with its accompanying exhibit, the Declaration of Ethan Diamond (“Diamond Decl.”) along with its accompanying exhibits, the Declaration of Joshua Kim (“Kim Decl.”) along with its accompanying exhibits, the

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<sup>1</sup> Epic has noticed this Motion for June 2, 2022, the first Thursday at least 35 days from the filing of this Motion, in accordance with Paragraph 11 of this Court’s Standing Order for Civil Cases and Northern District of California Civil Local Rule 7-2(a). Because Google’s policy change that is the subject of this Motion will take effect on June 1, 2022, Epic intends to meet and confer with Google following the filing of this Motion to seek Google’s agreement not to enforce the new policy while this Motion is pending. If the parties cannot reach agreement, Epic will move to shorten time for the Court to hear the Motion under Civil Local Rule 6-3, or in the alternative, to temporarily restrain Google from enforcing the June 1, 2022 policy change pending resolution of this Motion.

1 Declaration of Shawn Grunberger (“Grunberger Decl.”) along with its accompanying exhibits,  
2 the Declaration of Lauren A. Moskowitz (“Mosk. Decl.”) along with its accompanying exhibits,  
3 the Declaration of Steven Tadelis (“Tadelis Decl.”), all matters with respect to which this Court  
4 may take judicial notice, and such oral and documentary evidence as may be presented to the  
5 Court. Plaintiff hereby requests, pursuant to Federal Rule of Civil Procedure 65 and Northern  
6 District of California Civil Local Rules 7-2 and 65-2, that the Court issue a preliminary  
7 injunction in the form of the Proposed Order filed herewith.

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**PRELIMINARY STATEMENT**

1  
2 This case challenges, among other unlawful conduct, Google’s: (1) conduct in the  
3 market for the distribution of apps on Android, where it has a monopoly through its Google Play  
4 Store (“Google Play”), and (2) use of that monopoly to illegally tie its Google Play Billing  
5 (“GPB”) product to Google Play and impose a fee on all purchases that Google forces through  
6 GPB. The case is set for trial in April 2023. This Motion is necessary to preserve the status quo  
7 and prevent Google from implementing a change to its GPB policies that would cause Epic  
8 irreparable harm before this case can be decided. Since Google first launched its in-app  
9 payments product in 2011, it has exempted from its tie developers that sell digital content  
10 consumed outside the app. (Mosk. Decl., Ex. 8 at ’284 (“Payments Policy” or “Policy”).) This  
11 Policy exemption has applied to a wide range of apps, including music services like Epic’s  
12 Bandcamp app. Now, Google is closing the exemption and expanding its illegal tie.  
13 Specifically, Google has threatened to remove any apps, including Bandcamp, from Google Play  
14 on June 1, 2022, if they do not adopt GPB for the sale of all digital content. Epic therefore seeks  
15 preliminary injunctive relief.

16 Bandcamp, acquired by Epic in a transaction that closed last month, is an online record  
17 store and music community used by more than 500,000 independent artists and 11,000  
18 independent labels to connect with their fans online. (Diamond Decl. ¶ 10.) Consistent with  
19 Google’s Policy exemption, Bandcamp has used the payment solution of its choice—tailored to  
20 the needs of its business—to allow artists and labels to sell music and merchandise directly to  
21 their fans through its Android app. Bandcamp’s ability to use its preferred payment solution is  
22 critical because GPB does not provide Bandcamp with the services it needs and comes at a price  
23 that Bandcamp cannot afford. (*Id.* ¶¶ 27-28.) After more than a decade of allowing developers  
24 to choose their own payment solutions for purchases of digital content that could be consumed  
25 outside their apps, Google is now changing its Policy under the guise of a “clarification” that it  
26 announced in September 2020. On April 21, 2022, Google confirmed that it will enforce its new  
27 Policy against Bandcamp, including by removing the app from Google Play on June 1, 2022, if  
28 Bandcamp does not integrate GPB. (*Id.* ¶ 39.)

1 The new Policy will cause irreparable harm. As Bandcamp told Google in June and  
2 August 2021, the Policy change does not work for Bandcamp’s community or business. (Kim  
3 Decl. ¶¶ 9, 16.) Beyond the financial impact of the newly imposed revenue share, integrating  
4 GPB would undermine Bandcamp’s ability to serve fans and artists. (Diamond Decl. ¶ 28.)  
5 Integrating GPB may require Bandcamp to switch from paying out artists within 24 to 48 *hours*  
6 of a sale (an essential feature of Bandcamp’s offering) to paying out artists 15 to 45 *days* after a  
7 sale—a significant blow to the artists who rely on Bandcamp to make a living and continue  
8 making music. (Diamond Decl. ¶¶ 29-30; Grunberger Decl. ¶¶ 23-27.) In addition, Bandcamp is  
9 a large marketplace where artists and labels add and edit thousands of digital and physical items  
10 each day and have full control over pricing—a type of marketplace that GPB is not equipped to  
11 accommodate. (Diamond Decl. ¶ 33; Grunberger Decl. ¶¶ 30-34.) If Epic were forced to turn  
12 off digital sales in the app in lieu of integrating GPB, fans and artists would become less engaged  
13 with Bandcamp, and Epic would lose mobile users and artists at a time when building  
14 momentum is essential for Epic to grow the Bandcamp app into a global platform that connects  
15 musicians and creators. (Allison Decl. ¶¶ 22-23.)

16 All told, Google’s Policy change will cause Epic irreparable harm by forcing it to make  
17 the untenable choice between (i) trying to integrate GPB—which is incompatible with the way  
18 Bandcamp operates; (ii) removing the in-app option to purchase digital goods—which would  
19 transform the app from a marketplace to a window shop; or (iii) being ejected from Google Play  
20 altogether, which would cut Bandcamp off from the primary app distribution channel on  
21 Android. The related harms to the public interest, including to the independent artists who rely  
22 on Bandcamp, also weigh strongly in favor of a preliminary injunction. (*See infra* Section I.)

23 Epic is also likely to succeed on the merits of its antitrust and unfair competition claims.  
24 Indeed, Google’s Policy change is just the latest in a long line of anticompetitive acts designed to  
25 illegally foreclose competition within the Android ecosystem. Google unlawfully maintains a  
26 monopoly over the distribution of apps on Android by deploying “bait and switch” tactics,  
27 erecting insurmountable barriers to entry, and paying actual and potential competitors billions of  
28 dollars not to compete against Google Play. Google uses that monopoly power to force apps



1 distributed through Google Play to use GPB for in-app purchases of digital content, which is an  
2 unlawful tie. (*See infra* Section II.)

3 Preserving the status quo would not harm Google; it would simply require Google to  
4 continue operating as it has for over a decade. The balance of harms weighs firmly in favor of  
5 Epic, and a preliminary injunction should issue. (*See infra* Section III.)

### 6 ARGUMENT

7 To obtain a preliminary injunction, a plaintiff must show that “[it] is likely to succeed on  
8 the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that  
9 the balance of equities tips in [its] favor, and that an injunction is in the public interest.” *hiQ*  
10 *Labs, Inc. v. LinkedIn Corp.*, 2022 WL 1132814, at \*5 (9th Cir. Apr. 18, 2022). Under the Ninth  
11 Circuit’s “sliding scale” approach, “a stronger showing of one element may offset a weaker  
12 showing of another.” *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012); *see also*  
13 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). Each factor weighs in favor of  
14 granting Epic’s Motion and preserving the status quo of the past decade.

#### 15 **I. GOOGLE’S NEW POLICY WILL IRREPARABLY HARM EPIC AND** 16 **THOUSANDS OF ARTISTS.**

17 Google’s new Payments Policy, if permitted, threatens to irreparably harm Epic and  
18 thousands of artists who rely on the Bandcamp app.

19 *First*, Bandcamp’s payment solution is custom built to maximize efficiency and minimize  
20 costs, allowing artists to be paid within 24 to 48 hours of a sale. (Diamond Decl. ¶ 29;  
21 Grunberger Decl. ¶ 26.) This is an essential feature of the Bandcamp app that sets it apart.  
22 (Diamond Decl. ¶ 29.) Using GPB, by contrast, would materially affect Bandcamp’s payout  
23 process, because Google does not send payouts to developers until 15 to 45 days after a sale.  
24 (Grunberger Decl. ¶ 27.) To continue the practice of sending payouts to artists within only 24 to  
25 48 hours, Bandcamp would need to either try to advance these payouts or wait until it receives  
26 the money from Google, the delay from which would harm the artists who rely on Bandcamp to  
27 make a living and continue making music. (Diamond Decl. ¶ 30; Grunberger Decl. ¶ 27.)  
28 Therefore, switching to GPB threatens to cause significant harm to the app’s reputation with

1 artists as a reliable source of weekly or even daily income, making it less attractive to current and  
2 prospective artists. *See Am. Rena Int'l Corp. v. Sis-Joyce Int'l Co.*, 534 F. App'x 633, 636 (9th  
3 Cir. 2013) (finding irreparable harm based on “threatened loss of . . . customers or goodwill”).

4 *Second*, integrating GPB threatens to destroy another of Bandcamp’s key selling points to  
5 artists—namely, its ability to give artists around 82% of the revenue earned from their sales.

6 (Diamond Decl. ¶¶ 6, 27.) [REDACTED]

7 [REDACTED] (Mosk. Decl., Ex. 80.) While Google has offered  
8 Bandcamp a revenue share of 10% (in exchange for other concessions) (Kim Decl. ¶ 24), paying  
9 Google even a 10% revenue share would force Epic to change Bandcamp’s current business  
10 model or else operate the Bandcamp business at a long-term loss.<sup>1</sup> (Allison Decl. ¶ 20; Diamond  
11 Decl. ¶ 27.) *See Stuller, Inc. v. Steak N Shake Enters., Inc.*, 695 F.3d 676, 680 (7th Cir. 2012)  
12 (finding irreparable harm where franchisor’s policy change would cause “a significant change to  
13 [franchisee’s] business model”). In theory, Epic could pass on those costs to fans or artists  
14 (Allison Decl. ¶ 20; Diamond Decl. ¶ 27), but either change would cause irreparable harm to  
15 Epic by damaging its reputation and turning fans and artists away from the app and against Epic  
16 (Allison Decl. ¶ 25). In addition, a material degradation of the Bandcamp app or violation of its  
17 core principles within three months of Epic’s acquisition would irreparably harm Epic’s  
18 reputation with artists. (*Id.*)

19 *Third*, Bandcamp’s existing payment solution is fully integrated with PayPal, which  
20 allows the Bandcamp support team to offer quality customer support without leaving the  
21 Bandcamp payment system. (Diamond Decl. ¶ 32; Grunberger Decl. ¶ 29.) Integrating GPB  
22 would require significant time and effort to build a new infrastructure to provide the same quality  
23 of support using GPB. (*Id.*) Further, artists use Bandcamp to sell both digital and physical  
24 goods (*e.g.*, albums and merchandise), but because GPB cannot be used for the sale of physical  
25 goods, artists would have to deal with two different payment systems if Bandcamp adopts GPB  
26

27 <sup>1</sup> For the period from January 1, 2020 through March 16, 2022, Bandcamp’s overall take rate on  
28 gross sales and the gross profit margin on its digital marketplace was approximately 13% and  
7.5% respectively, leaving very little to cover operating expenses, let alone a platform fee.  
(Diamond Decl. ¶ 12.)

1 for digital sales, causing confusion among artists dealing with two different payment schedules.  
2 (Diamond Decl. ¶ 31; Grunberger Decl. ¶ 28.)

3 *Fourth*, GPB requires itemized pricing catalogs for every item available for purchase in  
4 the app. Complying with that requirement would seriously harm an app like Bandcamp, a large  
5 marketplace in which artists and labels add and edit thousands of digital and physical items each  
6 day and have full control over pricing, including the ability to allow fans to name their own price  
7 for items and the ability to set the price of an item in the currency of their choice. (Diamond  
8 Decl. ¶ 33; Grunberger Decl. ¶¶ 7, 30-34.) Moreover, GPB is only designed to pay out  
9 developers—it does not support running an open marketplace or facilitate a developer seeking  
10 to pay out thousands of merchants (*e.g.*, artists). (Grunberger Decl. ¶ 25.)

11 *Fifth*, the Payments Policy threatens to permanently harm Epic’s ability to grow the  
12 Bandcamp Android app into a global platform with more fans and artists, which is essential to  
13 building the audience base and momentum necessary to connect musicians with creators in  
14 search of high-quality music. (Allison Decl. ¶ 23.) Epic’s ability to attract content creators will  
15 suffer if its pool of music creators is diminished, which will have immediate and long-term  
16 consequences to growing the Bandcamp community. (*Id.* ¶ 24.) Epic is actively working to  
17 build its creator marketplace. (*Id.* ¶ 15.) Music services like Bandcamp, and the network of fans  
18 and artists Bandcamp has built, are critical to that goal—it is why Epic acquired Bandcamp.  
19 (*Id.* ¶¶ 15-16.) And mobile apps are the most important driver of new users, as such apps are  
20 increasingly becoming the only way younger consumers engage with each other and with content  
21 online. (*Id.* ¶ 11.) While Bandcamp theoretically could disable in-app sales of digital goods on  
22 Android to comply with the new Policy, as it has been forced to do on iOS, this threatens to cut  
23 off Bandcamp from this growing pool of current and prospective users. (*Id.* ¶¶ 22-24.) If Epic’s  
24 new music service is cut off from or degraded on Android, Epic would lose access to mobile  
25 users at a time when momentum in audience-building is the key to developing its  
26 creator-to-creator marketplace. (*Id.* ¶ 23.) *See Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943,  
27 949 (N.D. Cal. 2009) (harm to “competitive position” and “market share” support a finding of  
28 irreparable harm), *aff’d*, 658 F.3d 1150 (9th Cir. 2011).

## II. EPIC IS HIGHLY LIKELY TO SUCCEED ON THE MERITS.

Discovery has already substantiated the core allegations in Epic’s Complaint: Google has a monopoly over Android app distribution, and uses its monopoly power to illegally tie its payment product—GPB—to its app distribution product—Google Play. The basis for this Motion is Google’s Policy change to expand its unlawful tie to apps like Bandcamp that sell digital goods that can be consumed outside the app.

To prevail on the tying claims underlying this Motion, Epic must prove either that Google has market power in the tying product market (*i.e.*, app distribution on Android) under the Sherman Act, or sufficient economic power in the tying product market to coerce the purchase of the tied product under the Cartwright Act. Therefore, to demonstrate the tie and its anticompetitive effects, Epic begins by explaining how Google has violated Section 2 of the Sherman Act (and California’s Unfair Competition Law) through its monopoly maintenance in the market for the distribution of mobile apps to users of Android devices (*i.e.*, the tying product market). (*See infra* Section II.A.)<sup>2</sup> Epic then explains the illegality of Google’s tie and the harms caused to developers like Bandcamp, including the tie’s anticompetitive effects in the Android app distribution market and the market for in-app payment solutions on Android. (*See infra* Section II.B.)

Under the Ninth Circuit’s “sliding scale” approach, the overwhelming evidence showing Epic’s likelihood of success weighs strongly in favor of preliminary relief. *See Indep. Techs., LLC v. Otodata Wireless Network, Inc.*, 836 F. App’x 531, 533 (9th Cir. 2020) (“Where a party can show a strong chance of success on the merits, he need only show a possibility of irreparable harm.”).

### A. Google Anticompetitively Maintains Its Monopoly Power in the Android App Distribution Market.

A plaintiff can demonstrate monopoly power by (1) “defin[ing] the relevant market, (2) show[ing] that the defendant owns a dominant share of that market, and (3) show[ing] that

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<sup>2</sup> Conduct violates Section 2 where the defendant possesses monopoly power in the relevant market, willfully acquires or maintains that power, and causes antitrust injury. *F.T.C. v. Qualcomm Inc.*, 969 F.3d 974, 990 (9th Cir. 2020).

1 there are significant barriers to entry and [] existing competitors lack the capacity to increase  
2 their output”. *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 484 (9th Cir.  
3 2021). As explained below and in the declaration of Epic’s expert economist, Steven Tadelis,  
4 Epic satisfies all three prongs. (Tadelis Decl. ¶¶ 10-40, 46-54, 86-88.) There is a relevant  
5 product market for the distribution of Android-compatible apps to users of Android mobile  
6 devices. (*Id.* ¶¶ 10-40, 86-88 (defining the Android app distribution market).) Google  
7 dominates that market—Google Play is installed on virtually all Android devices, [REDACTED]  
8 [REDACTED]  
9 [REDACTED] (*Id.* ¶¶ 46-47; *see also* Mosk. Decl., Ex. 53 at ’229.R.) The Android app distribution  
10 market has significant barriers to entry, both inherent and manufactured by Google, which have  
11 foreclosed competition. (Tadelis Decl. ¶¶ 48-54.)

12 Google has built and maintained its monopoly by (1) deploying a series of “bait and  
13 switch” tactics, (2) erecting insurmountable barriers to entry, and (3) paying potential  
14 competitors not to compete.

15 **1. Google Built Its Monopoly Using ‘Bait and Switch’ Tactics.**

16 Since 2008, when Google launched Google Play’s predecessor, Android Market, Google  
17 has pursued a simple plan to build a monopoly over app distribution: [REDACTED]  
18 [REDACTED]  
19 [REDACTED] providing the network effects necessary to sustain growth, [REDACTED]  
20 [REDACTED] (Mosk.  
21 Decl., Ex. 5 at ’225-’226.) As part of this plan, Google cleared the field for Android Market by  
22 paying wireless carriers not to compete. Specifically, Google offered carriers a 25% cut of  
23 revenue from Android Market in exchange for their tacit commitment not to pursue their own  
24 app stores. [REDACTED]  
25 [REDACTED]

26 [REDACTED] (*Id.*, Ex. 4 at ’905.) [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 (*Id.*, Ex. 2 at '609.) In 2012, [REDACTED] Google  
2 rebranded it Google Play, [REDACTED]  
3 [REDACTED] (*Id.*, Ex. 9 at '919.R; Ex. 10 at '269.)

4 Google used similar anticompetitive tactics on developers. Google lured developers to  
5 create apps for Android with the claim that it “does not take a percentage” of revenues. (*Id.*, Ex.  
6 1.) Then Google reneged. [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] (*Id.*, Ex. 3 at '483-'484.) [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] (*Id.* at '481.) Google’s recent Policy change is yet another  
13 “bait and switch” for apps like Bandcamp, which were lured to Google Play with an exemption  
14 that is now being taken away in order to force them to pay a revenue share they cannot afford.

15 **2. Google Erected Insurmountable Barriers to Entry.**

16 Google has gone to great lengths to foreclose competition. [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] (Mosk. Decl., Ex. 13 at '006.R-'008.R.) [REDACTED]

20 [REDACTED]  
21 [REDACTED] (*Id.* at '007.R.) Google considered [REDACTED]  
22 [REDACTED]

23 [REDACTED] to foreclose  
24 competition. (*Id.*) Google proceeded with the second and third of these proposals. (*See infra*  
25 Section II.A.3.b.)

26 [REDACTED] Google directed its anticompetitive efforts [REDACTED]. The  
27 Google Play team was concerned that [REDACTED]  
28 [REDACTED] (*Id.*, Ex. 26 at '942.R.) [REDACTED]

1 [REDACTED]  
 2 [REDACTED] (*Id.*, at '954.R.) [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED].<sup>3</sup> (*Id.*, at  
 6 '951.R.) To date, Google's restrictions have worked exactly as planned, [REDACTED]

7 [REDACTED]  
 8 [REDACTED] (*Id.*, Ex. 109; Ex. 102.) The substantial barriers to entry—and Google's capitalization on  
 9 those barriers to entry—are undeniable. *See, e.g., United States v. Bazaarvoice, Inc.*, 2014 WL  
 10 203966, at \*49 (N.D. Cal. Jan. 8, 2014) (finding market power based, in part, on internal  
 11 documents “herald[ing]” the “substantial barriers to entry”).

### 12 3. Google Paid Potential Competitors Not To Compete.

13 Since 2019, Google has unlawfully protected its monopoly by (a) paying off top app  
 14 developers to stop them from developing and launching competing Android app stores; and  
 15 (b) paying off OEMs to abandon competing Android app stores. In so doing, Google has  
 16 betrayed its founding motto (“Don’t Be Evil”), committing “the supreme evil of antitrust”. *See*  
 17 *Verizon Commc’ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004)  
 18 (“collusion” is “the supreme evil of antitrust”); *F.T.C. v. Actavis, Inc.*, 570 U.S. 136, 152 (2013)  
 19 (an agreement where a party with no claim for damages “walks away with money simply so it  
 20 will stay away” from the market is anticompetitive). Both programs are also clear violations of  
 21 Section 1. *See, e.g., Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49 (1990).

#### 22 a. Google Paid Top App Developers Not To Compete.

23 In 2019, to block the development of competing Android app stores, Google launched an  
 24 initiative known as “[REDACTED]” (later rebranded “Project Hug” or the “Games Velocity  
 25 Program”). (Mosk. Decl., Ex. 40.) Google spent [REDACTED] on secret deals with the top  
 26 app developers that were “[REDACTED]” of “[REDACTED]”—meaning developers that [REDACTED]

27 <sup>3</sup> Google prohibits OEMs from offering frictionless downloading of alternative app stores (or any  
 28 other app outside Google Play) through the compatibility standards in its Anti-Fragmentation  
 Agreements and Android Compatibility Commitments. (*Id.*, Ex. 81 at 60; Ex. 36 at '772.)

1 [REDACTED]

2 [REDACTED] (*Id.*, Ex. 86 ( [REDACTED] Tr.) at 172:3-22; Ex. 39 at '822.R.) Project Hug was intended to  
3 contain the [REDACTED]

4 [REDACTED] (*Id.*, Ex. 86 ( [REDACTED] Tr.) at 142:1-143:22; 152:5-20.) Between 2019 and  
5 2020, Google signed Project Hug deals with [REDACTED] developers. (*Id.*, Ex. 67 at '697.R.) The general  
6 structure of each deal was the same: [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] (*Id.*, Ex. 39 at '828.R.) Google thus systematically deprived developers of  
10 any incentive to launch their own stores or to partner with other nascent stores on Android.

11 Google's Project Hug deal with the game developer [REDACTED] is illustrative. [REDACTED]

12 [REDACTED] (*Id.*, Ex. 55 at '919;  
13 Ex. 86 ( [REDACTED] Tr.) at 263:20-264:5.) [REDACTED]

14 [REDACTED]

15 [REDACTED] (*Id.*, Ex. 106 at '495-'497.) [REDACTED]

16 [REDACTED]

17 [REDACTED]<sup>4</sup> (*Id.*, Ex. 56 at '561-'562) [REDACTED]

18 [REDACTED] (*Id.*, Ex. 107 at '435, '441.)

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] (*Id.*, Ex. 67 at '705.R.)

22 b. Google Paid OEMs Not To Compete and Tried the Same with Samsung.

23 For years, Google has coerced OEMs into giving Google Play preferential treatment over  
24 competing app stores. Specifically, Google has conditioned OEMs' licensing of Google Play, as  
25 well as other essential Google services and the Android trademark, on OEMs' agreements to

26 \_\_\_\_\_  
27 <sup>4</sup> [REDACTED]

28 [REDACTED] (*Id.*, Ex. 54 at '773; Ex. 62 at '104.)



1 pre-install and place Google Play on the home-screen of each mobile device. (*Id.*, Ex. 90

2 ( [REDACTED] Tr.) at 92:20-93:6.) [REDACTED]

4 [REDACTED] (*Id.*, Ex. 90

5 ( [REDACTED] Tr.) at 243:21-245:03, 245:19-246:06; Ex. 45 at '107.R.) To address the  
6 competitive threat, in June 2019, Google approved a program to pay OEMs a percentage of  
7 revenues from both Search and Google Play in exchange for exclusivity for Google Play through  
8 a new revenue share agreement Google labeled "[REDACTED]". (*See id.*, Ex. 45 at '155.R.) [REDACTED]

11 [REDACTED] (*Id.*, Ex. 45 at '115.R.; Ex. 90 ( [REDACTED] Tr.) at 303:16-23.)

13 [REDACTED] (*Id.*, Ex. 45 at '107.R.)

14 By May 2020, many of the world's largest and most popular Android OEMs had agreed  
15 to Google Play exclusivity for most of their new Android devices, further entrenching Google's  
16 monopoly and guaranteeing expanded network effects. (*Id.*, Ex. 61 at '465.R.)<sup>5</sup> A presentation  
17 by [REDACTED] Google [REDACTED] touted that the [REDACTED] program had successfully eliminated  
18 the "risk of app developer contagion" by preventing OEMs from preloading any app store other  
19 than Google Play. (*Id.*, at '465.R-'466.R.)

20 In 2019, Google also attempted to negotiate a deal with Samsung to prevent Samsung's  
21 Galaxy Store from competing with Google Play. (*Id.*, Ex. 39 at '835.R.) Google and Samsung

23 [REDACTED] (*Id.*, Ex. 43 at '430.) Google offered to pay Samsung [REDACTED]

25 [REDACTED] (*Id.*, Ex. 43 at '431-'432.) [REDACTED]

27 \_\_\_\_\_  
28 <sup>5</sup> As of May 2020, the percentage of each OEM's new Android devices with Google Play  
exclusivity was as follows: HMD/Nokia (100%), Motorola (98%), LG (95%), BBK (70%),  
Sony (50%), Sharp (50%) and Xiaomi (40%). (*Id.*, Ex. 61 at '465.R.)

[REDACTED] (*Id.*, Ex. 43 at '430.)

#### 4. **Google's Conduct Has Anticompetitive Effects that Injure Epic.**

Google's conduct causes anticompetitive effects, which in turn, injure consumers and developers. For example, Google's monopoly allows it to charge supra-competitive prices (*i.e.*, its 15% to 30% fee), which causes developers to pay Google money that otherwise would be used to lower prices for consumers, hire employees and/or invest in new innovations for their apps. (Tadelis Decl. ¶¶ 101-110.) But for Google's conduct, distributors would compete for developers and users based on the quality of their services, including app curation, safety features (*e.g.*, privacy controls), mechanisms for app discovery and novel pricing models. (*Id.*, ¶¶ 111-113.) Developers, in turn, would be free to choose the distribution option best suited to their business. (*Id.*) These are precisely the types of harms the antitrust laws are intended to prevent. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 914, 922 (9th Cir. 2015). Bandcamp, for example, would benefit from distribution options with different pricing models (*e.g.*, lower fees) and less onerous conditions (*e.g.*, no requirement to use the distributor's own payment solution). (Diamond Decl. ¶¶ 27-28; Allison Decl. ¶¶ 20-21; *see also supra* Section I.)

#### B. **Google's Tie of Google Play Billing to Google Play Is Unlawful.**

Google uses its unlawfully maintained monopoly power in the Android app distribution market to insist that apps distributed through Google Play—which, as discussed above, is developers' only real choice to reach Android users—must use GPB as the exclusive payment solution for in-app purchases of digital goods and services. (Mosk. Decl., Ex. 68 at 21.) Google's tie violates Section 1 and the Cartwright Act.

#### 1. **Google's Tie Is *Per Se* Illegal Under Federal and State Law.**

“For a tying claim to suffer *per se* condemnation [under the Sherman Act], a plaintiff must prove: (1) that the defendant tied together the sale of two distinct products or services; (2) that the defendant possesses enough economic power in the tying product market to coerce its customers into purchasing the tied product; and (3) that the tying arrangement affects a not insubstantial volume of commerce in the tied product market.” *Cascade Health Sols. v.*

1 *PeaceHealth*, 515 F.3d 883, 913 (9th Cir. 2008). The elements of a *per se* tying arrangement  
 2 under the Cartwright Act are met where “(1) . . . the sale of the tying product was linked to the  
 3 sale of the tied product . . . ; (2) the party had sufficient economic power in the tying market to  
 4 coerce the purchase of the tied product; (3) a substantial amount of sale was affected in the tied  
 5 product; and (4) the complaining party sustained pecuniary loss.” *SC Manufactured Homes, Inc.*  
 6 *v. Leibert*, 162 Cal. App. 4th 68, 86 (2008). Each prong of both standards is easily satisfied here.

7 *First*, Google ties GPB to distribution through Google Play by threatening to cut off  
 8 distribution if developers do not use GPB. (Mosk. Decl., Ex. 68 at 21.) *Second*, Google’s  
 9 monopoly power in the tying product market (Android app distribution) is established in Section  
 10 II.A, above, and Google wields that monopoly power to force developers to use GPB. *See*  
 11 *CollegeNet, Inc. v. Common Application, Inc.*, 355 F. Supp. 3d 926, 955 (D. Or. 2018)  
 12 (“[F]orcing (or coercion) is likely if the seller has power in the tying product market.”). As  
 13 Bandcamp’s own experience shows, but for Google’s tie, developers would not voluntarily  
 14 choose GPB. (*See* Diamond Decl. ¶¶ 27-33.) *Third*, Google’s tie plainly affects the requisite  
 15 level of commerce. The tie (and accompanying fee) affects billions of dollars’ worth of in-app  
 16 transactions each year, [REDACTED] (Tadelis  
 17 Decl. ¶¶ 56, 74-75, 89; *see also* Mosk. Decl., Ex. 42 at ’896.) The fourth element of the  
 18 Cartwright Act is satisfied by the increased costs to Epic and its Bandcamp app associated with  
 19 complying with the tie. (*See supra* Section I.)

20 The evidence of Google’s coercion is undeniable. There is widespread dissatisfaction  
 21 with GPB among developers.<sup>6</sup> [REDACTED]

22 [REDACTED]  
 23 [REDACTED] (Mosk. Decl., Ex. 17 at ’441; Ex. 22 at ’774.) Even  
 24 Google’s own YouTube refused for years to utilize GPB— [REDACTED]  
 25 [REDACTED] (*Id.*, Ex. 63 at

26 <sup>6</sup> Developers have resisted GPB because [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]

(Mosk. Decl., Ex. 21 at ’450.)

1 '818.) The 15% to 30% fee that Google imposes on in-app transactions through GPB is divorced  
2 from any value that Google offers developers. [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] (*Id.*, Ex. 50 at '860; Ex. 48 at '587.R.) [REDACTED]  
6 [REDACTED] (*id.*, Ex.  
7 47 at '631), [REDACTED] (*id.*, Ex. 37 at '552.R).

8 Google cannot dispute that developers are coerced into using GPB and paying arbitrary fees.

9 **2. Google Is Now Coercing More Developers Into Using GPB.**

10 Google previously exempted from the tie apps like Bandcamp that sell digital content that  
11 could be consumed outside the app (*e.g.*, songs). Google's Policy change expands its tie into  
12 new territory—and is driven by one primary goal: increasing profit margins.

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] (Mosk. Decl., Ex. 18.) [REDACTED]  
16 [REDACTED]  
17 (*Id.*, Ex. 21 at '441, '453, '485.) [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] (*Id.*, Ex. 27 at '863-'864.) Google nevertheless [REDACTED]  
21 and extend its anticompetitive tie to developers, like Bandcamp, that had been lured to Google  
22 Play with the exemption. (*Id.*, Ex. 19 at '833.) [REDACTED]

23 [REDACTED]<sup>7</sup> (*Id.*, Ex. 21 at '483.)

24 **3. Google's Tie Has Substantial Anticompetitive Effects.**

25 Google's tying arrangement is also plainly illegal under a rule of reason analysis. *See W.*  
26 *Power Sports, Inc. v. Polaris Indus. Partners L.P.*, 951 F.2d 365, 1991 WL 266523, at \*2 (9th

27 <sup>7</sup> [REDACTED]  
28 [REDACTED] (*Id.*, Ex. 51 at '314.)

1 Cir. 1991) (“The rule of reason analysis requires the fact-finder to analyze the anticompetitive  
2 effects along with any pro-competitive effects to determine whether the [arrangement] is  
3 unreasonable on balance.”). The tie causes anticompetitive effects in both the in-app payment  
4 solutions market and the market for app distribution on Android. (Tadelis Decl. ¶¶ 101-113.)

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] (Mosk. Decl., Ex. 71 at ’121.R.) [REDACTED]  
8 [REDACTED]  
9 [REDACTED] (*Id.* at ’157.R, ’170.R-  
10 ’171.R.) [REDACTED]

11 [REDACTED]  
12 [REDACTED] The tie’s anticompetitive effects ripple across both markets,  
13 harming developers like Bandcamp by increasing costs and depriving them of the freedom to  
14 choose the payments or distribution method of their choice. (Tadelis Decl. ¶¶ 110-113; *see*  
15 *supra* Section I.)

16 In sum, Epic is highly likely to succeed on the merits of its claims that Google unlawfully  
17 maintains a monopoly in the Android app distribution market and uses that monopoly power to  
18 force developers to use GPB through an illegal tie.

### 19 **III. BALANCE OF HARMS TIPS FIRMLY IN EPIC’S FAVOR.**

20 The balance of harms strongly favors Epic. On one hand, absent an injunction, Epic and  
21 its Bandcamp app, as well as thousands of artists and independent labels, would suffer imminent  
22 irreparable harm. On the other hand, Google will suffer no harm if its status quo of the past  
23 decade is maintained and Google is prevented from extending its illegal tie. *See Deckers*  
24 *Outdoor Corp. v. Ozwear Connection Pty Ltd.*, 2014 WL 4679001, at \*13 (C.D. Cal. Sept. 18,  
25 2014) (finding no hardship from an injunction requiring a party to comply with the law).

1 Dated: April 28, 2022

2  
3 Respectfully submitted,

4  
5 By: \_\_\_\_\_



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7 Lauren A. Moskowitz

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9  
10 **FAEGRE DRINKER BIDDLE & REATH**  
11 **LLP**

12 Paul J. Riehle  
13 paul.riehle@faegredrinker.com

14 Four Embarcadero Center  
15 San Francisco, California 94111  
16 Telephone: (415) 591-7500  
17 Facsimile: (415) 591-7510

18 **CRAVATH, SWAINE & MOORE LLP**

19 Christine A. Varney (*pro hac vice*)  
20 cvarney@cravath.com  
21 Katherine B. Forrest (*pro hac vice*)  
22 kforrest@cravath.com  
23 Gary A. Bornstein (*pro hac vice*)  
24 gbornstein@cravath.com  
25 Timothy G. Cameron (*pro hac vice*)  
26 tcameron@cravath.com  
27 Yonatan Even (*pro hac vice*)  
28 yeven@cravath.com  
29 Lauren A. Moskowitz (*pro hac vice*)  
30 lmoskowitz@cravath.com  
31 Vanessa A. Lavelly (*pro hac vice* forthcoming)  
32 vlavelly@cravath.com  
33 M. Brent Byars (*pro hac vice*)  
34 mbyars@cravath.com

35 825 Eighth Avenue  
36 New York, New York 10019  
37 Telephone: (212) 474-1000  
38 Facsimile: (212) 474-3700

39 *Attorneys for Plaintiff Epic Games, Inc.*