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14 *Counsel for Plaintiffs*

15 UNITED STATES DISTRICT COURT

16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 MADELEINE LEPESANT and MARIANNE  
18 BOYLES, on behalf of themselves and all  
19 others similarly situated,

20 Plaintiffs

21 v.

22 Apple Inc.,

23 Defendant.  
24

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

25  
26  
27  
28

1 Plaintiffs Madeleine Lepesant and Marianne Boyles (“Plaintiffs”), for their class action  
2 complaint, allege upon personal knowledge as to themselves and their own actions, and upon  
3 information and belief, including the investigation of counsel, as follows:

#### 4 **NATURE OF ACTION**

5 1. This is an antitrust class action pursuant to Section 2 of the Sherman Antitrust Act  
6 of 1890, 15 U.S.C. § 2 (2004) (the “Sherman Act”) and California’s Unfair Competition Law, Cal.  
7 Bus. & Prof. Code § 17200, *et seq.* (the “UCL”), brought by Plaintiffs on their own behalf and on  
8 behalf of a class of persons similarly situated, those being persons who purchased software  
9 applications or licenses for software applications from the “iTunes” site or “App Store” owned and  
10 operated by Defendant Apple Inc. (“Apple”), or who made in-app purchases (defined herein)  
11 through such applications, for use on one or more Apple iPhones, iPads, or iPod Touches (“iOS  
12 Devices”) between December 29, 2007 and the present (the “Class Period”).<sup>1</sup>

#### 13 **A. Summary Of Material Facts**

14 2. With great fanfare, Apple launched its first iPhone, called the iPhone 2G, on June  
15 29, 2007. Prior to and after its launch, Apple hailed the iPhone as a revolutionary, “breakthrough”  
16 “smartphone” that functioned like a mobile computer with desktop-class email and other Internet  
17 communications capability. Apple built the iPhone’s operating system, known as “iOS,” to enable  
18 iPhone users to download and run computer-like software programs (called “applications” or  
19 “apps”) to browse the Internet, transform music into cell phone ringtones, take photos, play games  
20 and engage in other functions typically performed on desktop or laptop computers.

21 3. Shortly thereafter, on September 14, 2007, Apple introduced the first iPod Touch, a  
22 hand-held computer similar to the iPhone, which operates on the iOS system and can run apps that  
23 run on the iPhone. On April 3, 2010, Apple introduced the first iPad, a tablet computer with a  
24 touch screen interface, utilizing, like the iPhone and the iPod Touch, the iOS operating system,  
25 and able to run apps that function on those devices.

26  
27 <sup>1</sup> The term “iPad” as used herein includes all iPad Pro, iPad Mini and iPad Air models as  
28 well as standard iPads.

1           4.       Unbeknownst to iOS Device consumers, however, from the time it launched the  
2 iPhone through the present date, Apple has engaged in an anticompetitive scheme to monopolize  
3 the aftermarket for iOS applications (including purchases made within applications, such as  
4 payment for additional application features, full versions of games, and subscriptions for  
5 renewable access to content and memberships (*e.g.*, Hulu and Spotify) (“in-app purchases”)) in  
6 order to control and derive supracompetitive profits from the distribution of iOS apps worldwide.<sup>2</sup>  
7 As a result of its scheme, Apple has, from introduction of the iPhone 2G in 2007, when the only  
8 apps available were those that came with the iPhone, through the present, cornered 100% of the  
9 worldwide distribution market for iOS applications.

10           5.       Apple has succeeded in totally eliminating any and all competition in that multi-  
11 billion dollar market. Apple’s App Store is the only store in the entire world – online or off-line –  
12 where the tens of millions of U.S.-based iOS Device owners (and the many tens of millions of iOS  
13 Device owners worldwide) can buy an iOS app, and Apple’s unlawful monopolization of the apps  
14 market has enabled Apple to charge and collect a supracompetitive 30% fee from iOS Device  
15 consumers for each and every one of the billions of iOS apps they have bought since the iPhone’s  
16 launch thirteen years ago. Consequently, iOS Device consumers nationwide have paid hundreds  
17 of millions of dollars more for iOS apps than they would have paid in a competitive market.

18           6.       Unlike traditional desktop or laptop computer manufacturers, whose computers’  
19 operating systems allow consumers to buy software applications from any and all competing  
20 software distributors, Apple’s iOS system prohibits iOS Device consumers from buying software  
21 applications from anyone other than Apple.

22           7.       Even Apple’s own iMac and MacBook desktop and laptop computers’ operating  
23 systems – from which the iOS operating system was derived – allow consumers to buy software  
24 from whatever source they like and to pay the software manufacturer or distributor directly  
25 without having to pay an additional fee to Apple. There is no legitimate basis for Apple to treat its  
26

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27 <sup>2</sup>       Herein, references to the market for iOS applications include the market for in-app  
28 purchases.

1 iOS Devices customers any differently than it treats its iMac or MacBook customers, or to charge  
2 its iOS Devices customers a 30% mark-up for any and all software they buy for their iOS Devices.

3 8. But when Apple developed its unique iPhone, Apple took advantage of the heavy  
4 demand for its novel product to equip it with an operating system that foreclosed iPhone  
5 consumers from buying software from any source other than Apple. When Apple subsequently  
6 introduced the iPad and the iPod Touch, it placed the same software constraints on them. Apple  
7 thus forced those foreclosed iOS Devices consumers to pay Apple a 30% fee for each and every  
8 iOS app they buy. Stated in antitrust terminology, Apple improperly exploited its relationships  
9 with customers who purchased Apple's highly desirable and expensive iOS Devices by locking  
10 them in, without their knowledge or consent, into an aftermarket for iOS apps monopolized by  
11 Apple.

12 9. In addition to exerting anticompetitive control through the direct purchase of apps  
13 on the App Store, Apple also controls and receives supracompetitive profits on in-app purchases,  
14 including but not limited to subscriptions.

15 10. Apple's contracts with all developers offering content for iOS devices provide that  
16 Apple obtains 30% of the amount consumers pay for virtually all types of in-app purchases and  
17 subscriptions. Apple's establishment of a 30% commission rate has remained static since the  
18 onset. Apple chose the 30% commission without regard to or analysis of the costs to run the App  
19 Store.

20 11. Prior to 2011, users could read content from subscriptions made outside iOS, but  
21 were limited to a one-time subscription, not recurring subscriptions. In 2011, Apple expanded its  
22 functionality to allow for the sales of recurring subscriptions when purchased in the App Store but  
23 required a 30% commission. In 2016, Apple changed its policy such that for long-term  
24 subscriptions lasting over a year, Apple's fee is 30% during the first year but goes down to 15%  
25 thereafter.

26 12. In late 2020, Apple introduced the Small Business Program. That program reduced  
27 Apple's commission to 15% for developers making less than one million dollars. Apple's  
28 implementation of the Small Business Program was spurred, in part, by the COVID-19 pandemic

1 but also by litigation and regulatory pressure.

2 13. Apple also controls what prices developers can charge. It exercises that control by  
3 insisting that every paid app be priced in dollar increments at \$0.99, \$1.99, \$2.99, and so forth.

4 14. Apple's motive for its anticompetitive conduct was simple: Apple did not want its  
5 iOS Device-related revenue stream to end when a consumer bought an iOS Device, like it  
6 generally does when consumers purchase iMac and MacBook computers. So Apple concocted  
7 and maintained a plan to continue generating additional revenues over the entire useful life of  
8 every iOS Device it sold by cornering the distribution market for iOS applications and charging  
9 consumers an extra 30% for every app. Through this scheme Apple would profit not only from  
10 the sales of tens of millions of iOS Devices, it would also profit from each and every one of the  
11 billions of future apps sales made to Apple's iOS Devices customers.

12 15. Apple's anticompetitive scheme has generated enormous supracompetitive profits  
13 for Apple. Apple now offers more than 2.22 million apps in the App Store,<sup>3</sup> and iOS Device  
14 consumers worldwide have downloaded apps more than 200 billion times since July 2008.  
15 According to Sensor Tower, the provider of a leading app analytics platform that aggregates data  
16 about consumer app downloads and purchases for use by developers, in 2019, the average annual  
17 in-app spending per active iPhone in the United States reached \$100.<sup>4</sup> iOS Devices consumers  
18 have been overcharged billions of dollars for paid apps and in-app purchases during the Class  
19 Period as a result of Apple's anticompetitive conduct.

20 16. That Apple has engaged in unlawful monopolistic behavior with respect to iOS  
21 apps is perfectly consistent with Apple's attitude towards antitrust compliance generally. A  
22 federal district court judge who observed Apple's attitude towards antitrust compliance during a  
23 2013 trial found that Apple had unlawfully fixed e-book prices and concluded that Apple as an  
24 institution simply "does not want to engage in retail price competition" – indeed, "one of its

25 \_\_\_\_\_  
26 <sup>3</sup> See <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/> (last viewed November 9, 2021).

27 <sup>4</sup> See <https://sensortower.com/blog/revenue-per-iphone-2019> (last viewed November 9,  
28 2021).

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