

1 Joseph M. Alioto (SBN 42680)
Tatiana V. Wallace, Esq. (SBN 233939)
2 Angelia Alioto-Grace (SBN 206899)
ALIOTO LAW FIRM
3 One Sansome Street, 35th Floor
4 San Francisco, CA 94104
Telephone: (415) 434-8900
5 Email: jmalioto@aliotolaw.com

6 [Additional Counsel Listed on Last Page]

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 CALIFORNIA CRANE SCHOOL, INC.,
12 on behalf of itself and all others similarly
situated

13 Plaintiff,

14 vs.

15 GOOGLE LLC, ALPHABET, INC., XXVI
16 HOLDINGS, INC., APPLE, INC., TIM
17 COOK, SUNDAR PICHAI, and ERIC
18 SCHMIDT,

19 Defendants.

Case No: 4:21-cv-10001 HSG

FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF SECTIONS 1 AND 2 OF
THE SHERMAN ANTITRUST ACT
(15 U.S.C. §§ 1 AND 2)

CLASS ACTION

DEMAND FOR JURY TRIAL

20
21 1. This is a private antitrust suit brought under Sections 4 and 16 of the Clayton
22 Antitrust Act (15 U.S.C. 15, 26) for actual and potential damages and injunctive relief caused
23 by reason of and made necessary by the Defendants' past, present and substantially
24 threatening continuation of violations of Sections 1 and 2 of the Sherman Antitrust Act (15
25 U.S.C. 1, 2).

26
27 2. The Defendants Apple and Google agreed that Apple would not compete in the
28 search business in competition with Google.

1 3. In exchange for Apple's commitment not to compete in the search business in
2 competition with Google, Google agreed to share its profits from the search business with
3 Apple and, in addition, to pay Apple extra billions of dollars.

4 4. Apple agreed to assist Google in building its search business for their mutual
5 benefit.

6 5. For Google to be able to generate sufficient billions of dollars to pay to Apple,
7 Apple agreed that Google would be the only search engine automatically included in all of
8 Apple's devices.

9 6. Apple's agreement to include Google as the initial search engine on all of
10 Apple's devices gives Google a substantial and unfair anticompetitive advantage over other
11 search providers, actual and potential, including Yahoo!, DuckDuckGo, Bing, and others.

12 7. Apple and Google agreed to suppress, eliminate, and/or foreclose other search
13 providers and/or potential search providers, and non-Google favored advertisers.

14 8. These agreements were formed, confirmed, reconfirmed, and negotiated from
15 time to time in private, secret, and clandestine personal meetings between the Chief Executive
16 Officers and Chairmen of Apple and Google.

17 9. The architects of the combination during the early 2000's were Steve Jobs, the
18 CEO and Chairman of Apple, and Eric Schmidt, the CEO and Chairman of Google.

19 10. More recently, the continued combination to eliminate competition between
20 Apple and Google for the search business has been re-affirmed by Tim Cook, the CEO of
21 Apple, and Sundar Pichai, CEO and Chairman of Google.

22 11. The meetings between the CEOs and Chairmen of Apple and Google were
23 clandestine to fraudulently conceal the agreement not to compete in the search business.
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1 12. The Plaintiffs do not know when the agreement was originally formed but
2 allege that it began with Messrs. Jobs and Schmidt and that it has continued in force under
3 Messrs. Cook and Pichai.

4 13. Some of the secret meetings have been photographed and taped by bystanders
5 who chanced to notice the conspirators meeting together.

6 14. These meetings were undertaken to promote the shared vision that Apple and
7 Google would act in effect as one company that was merged without merging. Apple and
8 Google invented the word “co-opetitive” to describe their unlawful combination and
9 conspiracy.
10

11 15. These CEOs and Chairmen knew and understood that their agreements were
12 illegal under the Antitrust Laws of the United States. The CEOs and Chairmen had been
13 advised that their agreement to divide the market would violate the antitrust laws.
14

15 16. Notwithstanding the advice of their counsel, the CEOs and Chairmen of Apple
16 and Google insisted on going forward with the agreement in contumacious disregard of the
17 law, thereby waiving any privilege that otherwise would attach to communications with their
18 counsel.

19 17. The overall purpose of the Defendants’ agreement was to eliminate the
20 potential competition of Apple entering the search business.

21 18. In furtherance of the unlawful agreement, the Defendants engaged in the
22 following acts and means, among others, to ensure the success of the agreement:
23

- 24 a. secret meetings between the CEOs;
 - 25 b. profit-pooling;
 - 26 c. payment of billions of dollars every year by Google to Apple;
- 27
28

1 d. automatic inclusion of Google search on Apple devices, to the exclusion
2 of other search companies, and non-Google favored advertisers;

3 e. agreement that Apple would not compete;

4 f. the recognition and agreement that the more Google made the more
5 Apple made; and

6 g. elimination of Apple as a potential competitor in the search business.

7
8 19. More than half (50%) of Google's search business was conducted through use
9 of Apple devices.

10 20. Because more than half of Google's search business was conducted through
11 Apple devices, Apple was a major potential threat to Google, and that threat was designated
12 by Google as "Code Red."

13 21. Google paid billions of dollars to Apple and agreed to share its profits with
14 Apple to eliminate the threat and fear of Apple as a competitor.

15 22. Google viewed the aspect of Apple as a potential competitor to be "Code
16 Red."

17 23. If Apple became a competitor in the search business, Google would have lost
18 half of its business.

19 24. Google, as of September 2020, controlled 94% of the mobile search engine
20 U.S. market share.

21 25. Google, as of September 2020, controlled 82% of computer search engine U.S.
22 market share.

23 26. For the last 10 years, from 2009 to 2019, Google increased its control of the
24 search engine U.S. market share from 80% to 88%.

1 27. Google charges higher prices to advertisers than would otherwise be the case in
2 the absence of the Google-Apple agreement.

3 28. By reason of the agreement between Apple and Google, the prices, the
4 production, the innovation, and the quality of the search business has been substantially,
5 adversely, and anticompetitively affected.

6 29. In addition to the potential and actual damages suffered by reason of the
7 conspiracy, the Plaintiff and the class also charge under Section 16 of the Clayton Act that the
8 illegal payments by Google to Apple and the illegal profit sharing, and all payments by
9 Google to Apple in furtherance of the agreement, must be disgorged under principles of equity
10 on the grounds that these wrongdoers cannot be allowed or permitted to profit from their own
11 wrongdoing.
12

13 30. Because of the fraudulent nature of the clandestine meetings of these CEOs and
14 Chairmen of Apple and Google, and because of the secrecy of their agreements, the exact
15 amounts and times of the payments, rebates, and profit sharing that Google made to Apple are
16 alleged on information and belief.
17

18 31. In any one year, Google paid Apple more than \$1 billion.

19 32. In any one year, Google paid Apple more than \$3 billion.

20 33. In any one year, Google paid Apple more than \$6 billion.

21 34. In any one year, Google paid Apple more than \$9 billion.

22 35. In any one year, Google paid Apple more than \$10 billion.

23 36. In any one year, Google paid Apple more than \$12 billion.

24 37. In any one year, Google paid Apple more than \$12 billion.

25 38. In any one year, Google paid Apple more than \$15 billion.
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