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Epic Games, Inc.*

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

17 EPIC GAMES, INC.,

18 Plaintiff,

19 v.

20 APPLE INC.,

21 Defendant.

CASE NO. 4:20-cv-05640-YGR  
**EPIC GAMES, INC.'S ANSWER TO  
APPLE INC.'S COUNTERCLAIMS**

23 APPLE INC.,

24 Counterclaimant,

25 v.

26 EPIC GAMES, INC.,

27 Counter-Defendant.

1 Counter-Defendant Epic Games, Inc. (“Epic”), by and through its undersigned counsel,  
2 hereby answers Apple Inc.’s (“Apple”) Counterclaims, filed on September 8, 2020 (Dkt. 66), and  
3 asserts affirmative and other defenses.

#### 4 PRELIMINARY STATEMENT

5 On August 13, 2020, Epic provided *Fortnite* users on iOS with the choice of an  
6 alternative payment processing solution called Epic Direct Pay, which offered consumers lower prices  
7 and better customer service than Apple’s payment processor, IAP. Epic does not dispute that this  
8 competing payment solution was prohibited by contractual provisions that Apple has unlawfully forced  
9 on developers like Epic who sell in-app digital content, even though Apple allows numerous other app  
10 developers to use competing solutions. Epic also does not dispute that, if Apple’s contracts were  
11 lawful, all in-app purchases made by *Fortnite* users on iOS would be subject to Apple’s 30% tax, even  
12 though Apple has exempted numerous other developers from this tax. But Epic denies that its refusal  
13 to abide by Apple’s anti-competitive scheme was in any way wrongful. Epic looks forward to proving  
14 at trial that the agreements on which Apple bases its counterclaims are illegal and unenforceable.

15 Apple has asserted repeatedly that “Epic’s lawsuit is nothing more than a basic  
16 disagreement over money”. This is not correct. Epic has not sought and will not seek money damages  
17 from Apple. Instead, Apple is now the party that has sued seeking payment from Epic on multiple  
18 different theories. Indeed, Apple’s counterclaims do more than merely seek to force Epic to pay  
19 Apple’s supra-competitive 30% tax on in-app purchases. Apple’s broad counterclaims are designed to  
20 punish Epic for its defiance and send a message to other developers who might dare rebel against  
21 Apple. Apple asserts meritless claims, such as “conversion”, that lack any basis in law or fact. These  
22 claims are designed to paint Epic as a bad actor—Apple hyperbolically describes Epic as a thief—for  
23 seeking to deal directly with Epic’s own customers, which Apple’s anti-competitive rules prohibit for  
24 the sale of in-app digital content. Apple also seeks “punitive damages” to punish Epic and further  
25 deter other app developers who might stand up to Apple’s oppressive and illegal conduct.

26 To avoid any possible delay in the resolution of Epic’s antitrust claims against Apple,  
27 Epic answers and denies Apple’s legally deficient counterclaims herein. And because the ultimate  
28 resolution of this case should focus on Apple’s conduct and Apple’s anti-competitive restrictions, Epic

1 will soon move the Court (pursuant to Federal Rule of Civil Procedure 12(c)) for judgment on Apple's  
2 tort claims and on Apple's claim based on the implied covenant of good faith and fair dealing, which  
3 fail as a matter of law.

4 **ANSWER**

5 Except as otherwise expressly set forth below, Epic denies each and every allegation  
6 contained in the Counterclaims, including, without limitation, headings, sub-headings, and footnotes  
7 contained in the Counterclaims. With respect to the footnotes, Epic denies the allegations contained in  
8 each, and, for those containing citations, refers to the content of the citations. Epic expressly reserves  
9 the right to amend and/or supplement its answer and defenses. For the avoidance of doubt, Epic is not  
10 responding to Apple's Answer, nor to the introductory materials contained in the unnumbered  
11 paragraphs preceding Apple's Answer.

12 1. Epic states that the allegations in Paragraph 1 state a legal conclusion to which  
13 no response is required. To the extent a response is required, Epic denies the allegations in Paragraph  
14 1, except admits that there is diversity of citizenship between Epic and Apple, that the amount-in-  
15 controversy exceeds \$75,000, and that Apple purports to invoke the jurisdiction of this Court pursuant  
16 to the statutes cited therein.

17 2. Epic states that the allegations in Paragraph 2 state a legal conclusion to which  
18 no response is required. To the extent a response is required, Epic denies the allegations in Paragraph  
19 2, except admits that it filed a Complaint against Apple in this District, admits that Epic Games, Inc.  
20 entered into a standard, click-through Apple Developer Program License Agreement drafted by Apple  
21 (the "'84 License Agreement"), and refers to the '84 License Agreement for its contents. By referring  
22 to the '84 License Agreement, a contract of adhesion that contains anti-competitive and unfair terms,  
23 Epic does not admit that any term in the Agreement is lawful and/or enforceable against Epic.<sup>1</sup>

24  
25 <sup>1</sup> Apple's counterclaims are based on the "Apple Developer Program License Agreement  
26 ('License Agreement') between the parties"—that is the '84 License Agreement between Epic Games,  
27 Inc. and Apple Inc., which relates to the Apple Developer Program Account previously held by Epic  
28 Games, Inc. with a Team ID ending in '84 (the "'84 Developer Account"). Apple further alleges that  
Epic Games, Inc. has entered into an Apple Developer Program Agreement relating to the '84 account  
(the "'84 Developer Agreement"). Other entities that Apple has deemed to be affiliated with Epic  
Games, Inc. have executed separate Apple Developer Program Agreements and Developer Program  
License Agreements and maintain separate Apple Developer Program accounts. Epic Games, Inc.,  
other affiliated entities, and individual programmers also have entered into Xcode and Apple SDKs

1           3.       Epic states that the allegations in Paragraph 3 state a legal conclusion to which  
2 no response is required. To the extent a response is required, Epic denies the allegations in Paragraph  
3 3, except admits that it brought an action against Apple in this Court, admits that Epic Games, Inc.  
4 entered into the '84 License Agreement, and refers to the '84 License Agreement for its contents. By  
5 referring to the '84 License Agreement, a contract of adhesion that contains anti-competitive and  
6 unfair terms, Epic does not admit that any term in the Agreement is lawful and/or enforceable against  
7 Epic.

8           4.       Epic admits, on information and belief, the allegations in Paragraph 4.

9           5.       Epic admits the allegations in Paragraph 5.

10          6.       Epic states that it is without knowledge or information sufficient to form a belief  
11 as to the truth of the allegations in Paragraph 6, except that Epic admits, on information and belief, that  
12 Apple released the iPhone in 2007 and launched its App Store in 2008, and that Apple invites third-  
13 party app developers to develop a wide array of apps for the iOS ecosystem.

14          7.       Epic denies the allegations in Paragraph 7 except admits that the App Store can  
15 be used to download iOS apps. In particular, Epic denies Apple's description of the typical  
16 distribution options available to software developers prior to the App Store, which included digital  
17 software stores and other distribution channels.

18          8.       Epic is without knowledge or information sufficient to form a belief as to the  
19 truth of the allegations in Paragraph 8, except Epic admits that the distribution of iOS apps and in-app  
20 purchases of digital content comprise substantial volumes of interstate and foreign commerce and Epic  
21 denies that Apple conceived of the idea of a digital or mobile app store.

22          9.       Epic is without knowledge or information sufficient to form a belief as to the  
23 truth of the allegations in Paragraph 9, except Epic denies Apple's stated reasons for the success of the  
24 App Store; denies that Apple offers Test Flight to all developers; and admits that third-party apps add  
25 value to the iPhone and that the App Store is dependent on apps created by third-party developers.

26  
27  
28 \_\_\_\_\_  
Agreements drafted by Apple. References to the '84 License Agreement and '84 Developer Agreement in this Answer are solely to the agreements executed by Epic Games, Inc.

1           10. Epic denies the allegations in Paragraph 10, except states that it is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations concerning sales  
3 “facilitated” by the App Store in 2019 or the fraction thereof distributed to developers; and admits  
4 (i) that the App Store is a business, (ii) that the App Store is currently the only platform by which  
5 developers can reach the approximately one billion iOS users, (iii) that Apple’s anti-competitive  
6 restraints require developers to allow Apple to manage many aspects of transactions between app  
7 developers and their customers on iOS, (iv) that developers are required to pay Apple a \$99 annual fee  
8 in order to distribute apps through the App Store, and (v) that Apple charges a commission on the sale  
9 of apps and on certain in-app transactions for digital goods and services. Epic denies in particular that  
10 Apple receives nothing except a nominal annual fee with respect to developers who offer only free  
11 apps, as Apple has other ways in which it is compensated for its investment in iOS and obtains value  
12 from the distribution of such apps.

13           11. Epic denies the allegations in Paragraph 11, except admits that, through anti-  
14 competitive contracts of adhesion, Apple requires certain developers to use only IAP to process certain  
15 in-app purchases (but allows certain app developers not to use IAP), and that Apple further requires  
16 developers pay a commission on those transactions.

17           12. Epic denies the allegations in Paragraph 12, except states that it is without  
18 knowledge or information sufficient to form a belief as to the truth of the allegations concerning the  
19 features Apple may introduce at the end of the year. Epic further states that Apple exempts certain app  
20 developers and certain in-app purchases from its IAP requirements.

21           13. Epic denies the allegations in Paragraph 13, except admits that it has developed  
22 iOS games and distributed iOS games through the App Store, as it was compelled to do by Apple’s  
23 anti-competitive restraints.

24           14. Epic denies the allegations in Paragraph 14, except admits that Epic Games, Inc.  
25 entered into the ’84 Developer Agreement—a standard, click-through agreement drafted by Apple—  
26 and the ’84 License Agreement, and refers to the ’84 Developer Agreement and to the ’84 License  
27 Agreement for their contents. By referring to the ’84 Developer Agreement and to the ’84 License  
28

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