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

IN RE APPLE APP DEVELOPER
ANTITRUST LITIGATION
(PROTON/KPA)

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Case No. 4:25-cv-04438-YGR

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
THE AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT OR STAY
PROCEEDINGS**

Date: November 18, 2025
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Judge: Hon. Yvonne Gonzalez Rogers

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1 Plaintiffs hereby oppose Defendant Apple Inc.’s (“Apple”) Motion to Dismiss the
2 Amended Consolidated Class Action Complaint or Stay Proceedings (“Motion to Dismiss” and/or
3 “Mot.”), filed on September 5, 2025. Dkt. No. 45.

4 I. INTRODUCTION

5 Apple uses its control over iOS app distribution to unlawfully impose a “Hobson’s choice”
6 on app developers: agree to use Apple’s proprietary app-distribution and in-app payment systems
7 and hand over up to 30% of all revenue or lose access to the App Store and the iOS ecosystem
8 entirely. Apple enforces this coercive arrangement through mandatory contracts, technical
9 restrictions, and policies that punish developers for trying to inform users about lower-cost
10 alternatives. The result is a system in which Apple extracts supracompetitive fees from the very
11 developers whose innovations drive the App Store’s success while blocking competition and
12 distorting the markets for both app distribution and app payment processing.

13 Plaintiffs—iOS app developers and Korean associations representing developer interests—
14 challenge this anticompetitive scheme under federal, California, Korean, and Japanese law based
15 on detailed factual allegations, some of which are drawn from public trial evidence and Apple’s
16 own admissions. Plaintiffs allege that Apple’s conduct harms not just developers but the
17 competitive process itself by foreclosing rival platforms, raising barriers to entry, and inflating
18 prices without any legitimate justification. Indeed, Apple’s proffered justifications—such as
19 security and privacy—are pretextual, and substantially less restrictive alternatives exist to achieve
20 Apple’s stated ends.

21 Apple seeks dismissal entirely on meritless procedural and legal grounds. It relies heavily
22 on the Court’s trial findings about disputed facts in *Epic Games, Inc. v. Apple Inc.* to argue that
23 those findings somehow bar Plaintiffs here from making their claims. Apple’s hook for that
24 argument is supposedly the incorporation-by-reference doctrine, but that doctrine does not apply
25 because Plaintiffs do not, in fact, incorporate the *Epic* decision by reference; they simply cite facts
26 and admissions made public. In reality, Apple seeks to apply collateral estoppel. But that attempt
27

1 fails because Plaintiffs were not parties to *Epic* and are not in privity with Epic. The law thus is
2 clear that collateral estoppel cannot apply. Moreover, this Court explicitly recognized in *Epic* that
3 another plaintiff using the same record might have made a better trial presentation with different
4 evidence and achieve what Epic did not with respect to its Sherman Act claims. Apple seeks to
5 deprive Plaintiffs of exactly this opportunity, which the law holds they are due.

6 Apple's arguments regarding standing and equitable relief are equally unavailing. Plaintiffs
7 do not seek damages under California's UCL but rather restitution—specifically, the return of
8 supracompetitive commissions that Apple collected directly from app developers. That form of
9 monetary relief is well-established as equitable and recoverable under the UCL. Plaintiffs have
10 also properly pleaded restitution in the alternative, which is sufficient at the pleading stage.

11 Apple next argues that Plaintiffs' claims are time-barred. But Apple's scheme is ongoing
12 and continues to inflict new injuries through recurring repeated overcharges, contract renewals,
13 and ongoing enforcement. The Supreme Court, Ninth Circuit, other Courts of Appeals, and courts
14 within this District—including this Court—all have held repeatedly that such conduct constitutes
15 new overt acts restarting the limitations period under the continuing violation doctrine. Any other
16 ruling would give Apple a license to profitably violate the antitrust laws.

17 Nor can Apple avoid accountability under Korean or Japanese law. Apple previously
18 persuaded Japanese courts that this District is the appropriate forum for resolving such disputes,
19 and it cannot now reverse course. For the non-U.S. transactions involving Korean and Japanese
20 developers, to the extent U.S. substantive law cannot be applied, then this Court can and should
21 properly apply the substantive law of Korea and Japan.

22 Apple further argues that Plaintiffs KPA and KEPA have not adequately pleaded
23 associational standing. Apple is incorrect, and there is no requirement that Plaintiffs identify a
24 specific individual who has been harmed by Apple's anticompetitive conduct at this stage of the
25 litigation. And Apple's attacks on Scalise and Scalisco LLC are moot as they have voluntarily
26 dismissed their claims.

For these reasons, none of Apple’s dismissal arguments withstand scrutiny. Plaintiffs are not bound by findings in a case to which they were not parties; they appropriately seek equitable relief; they allege continuing violations that restart the limitations period; and they bring Korean and Japanese law claims in the very forum Apple itself has designated as proper. Having alleged a coherent and ongoing anticompetitive scheme supported by detailed facts, Plaintiffs are entitled to proceed beyond the pleading stage. The Motion to Dismiss should be denied in full and the case should proceed accordingly.

II. SUMMARY OF ALLEGATIONS IN THE AMENDED COMPLAINT¹

The core facts underlying this case are well known to this Court. Apple demands that all app developers who distribute apps through the App Store execute Apple’s Developer Program License Agreement (“DPLA”) every year. AC ¶¶ 111, 185, 278. Bound by this contract of adhesion and related App Guidelines, *id.* ¶¶ 146, 185, 197, developers are: (i) charged supracompetitive commissions for the privilege of distributing apps through the App Store and the use of Apple’s in-app payment processing services, *id.* ¶¶ 115-22, 196-203, 215, 219-21, 260; (ii) barred from distributing or selling iOS Apps² through competing iOS App platforms, *id.* ¶¶ 124-36, 146, 185, 197, 280-83, 296; and (iii) unable to steer consumers to alternative app distribution or payment processing options, *id.* ¶¶ 89, 147, 190-95, 204-06.

Apple used these anticompetitive policies (and others) to acquire and maintain monopoly power over the distinct markets for iOS App Distribution and iOS App Payment Processing, *id.* ¶¶ 75-89, respectively, and to reap monopoly profits therefrom, all while stifling innovation and consumer choice and imposing inflated costs on app developers and consumers, *see id.* ¶¶ 144-250, 259-70. Apple’s proffered justifications for its anticompetitive conduct are pretextual, *id.* ¶¶ 3, 89, 263, 309, 323, and there are less restrictive alternatives available, *id.* ¶¶ 309, 323. Yet

¹ All “AC ¶” and “Amended Complaint” references are to the *Amended Consolidated Class Action Complaint* filed in this case on August 8, 2025, Dkt. No. 44.

² Defined in the Amended Complaint to include iOS applications and/or in-app digital goods or services, including subscriptions offered for sale at a non-zero price.

Apple’s anticompetitive tactics have evolved in recent years (including in response to this Court’s injunction in *Epic*), contributing to new and accumulating injuries to app developers. *Id.* ¶¶ 109, 111, 259-70, 278-95, 308, 324, 332, 334, 342, 345, 352, 364, 370, 380, 387-88.

Here, Plaintiffs injured by Apple’s continuing misconduct include app developers (Proton AG, PangSky Co., Ltd., and OverX Co., Ltd.) and associations of app developers (KPA and KEPA).³ Though Apple challenges KPA and KEPA’s associational standing, Plaintiffs detail how their respective developer members were injured by Apple’s anticompetitive behavior. *Id.* ¶¶ 30, 35, 259-77, 308, 324, 352, 364.

Plaintiffs plead claims for damages and injunctive relief under Sections 1, 2, and 3 of the Sherman Act (Counts 1 and 2); for restitution under California’s Unfair Competition Law (Count 3); for damages and injunctive relief under Korean law (Count 4); and for damages and injunctive relief under Japanese law (Counts 5 and 6). Plaintiffs assert that the Northern District of California is the appropriate forum for this litigation, including for the Korean and Japanese law claims, and that the foreign laws should be applied to the corresponding claims. *Id.* ¶¶ 18-20.

III. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff need only “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible when the facts, viewed in the light most favorable to the non-moving party, allow the court to draw the reasonable inference that the defendant is liable for engaging in the alleged conduct. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013). The same standard applies to motions to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1): the court, deeming all allegations true and drawing all inferences in the plaintiff’s favor, “determines whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

³ The parties have filed a stipulation to dismiss Plaintiffs Scalisco LLC and Dan Scalise without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

IV. ARGUMENT

A. Plaintiffs Plausibly State Sherman Act and UCL Claims

1. Citing Record Evidence from the Separate *Epic v. Apple* Case Does Not Trigger Collateral Estoppel

Apple contends that Plaintiffs' limited citations to the record in *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR (N.D. Cal.), somehow bind Plaintiffs to all the findings from the trial in that case. Mot. at 14-16. That argument fails on multiple levels, but mainly because there is no privity between Epic and Plaintiffs, so Apple's attempt to bind Plaintiffs through non-mutual defensive collateral estoppel (in all but Apple's choice of words) cannot succeed.

To begin with, Plaintiffs did not incorporate the *Epic* decision by reference; they neither attached it to their Complaint nor referred to it "extensively." See *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Rather, Plaintiffs narrowly cited discrete portions of the *Epic* decision to support related well-pleaded factual allegations. See, e.g., AC ¶¶ 90-106, 115-22. Apple cites no case incorporating a court decision. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018) (factual document); *Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1115 (9th Cir. 2014) (same); *Ritchie*, 342 F.3d at 908 (same); *EVOX Prods., LLC v. Verizon Media Inc.*, 2021 WL 3260609, at *1 (C.D. Cal. May 5, 2021) (incorporates nothing); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (incorporates an arbitration award attached to complaint and directly addressing the exact same facts among the exact same parties). Even if the incorporation-by-reference doctrine applied, that doctrine is narrowly limited to factual content that contradicts specific well-pleaded allegations, see *Khoja*, 899 F.3d at 1003 (doctrine addresses whether movant is attempting to "dispute facts stated in a well-pleaded complaint"), and Apple points to no such supposedly contradictory evidence from *Epic*. Apple's authorities are consistent with this principle. See, e.g., *Khoja*, 899 F.3d at 1003 (incorporating purely factual document); *Gonzalez*, 759 F.3d at 1115 (same); *Sprewell*, 266 F.3d at 988 (attaching document that "fatally undermined" plaintiff's allegations).

1 What Apple really seeks is to bind Plaintiffs—through collateral estoppel—to certain
 2 conclusions the Court reached as factfinder in *Epic*. But collateral estoppel applies only where “the
 3 party against whom collateral estoppel is asserted was a *party or in privity with a party at the first*
 4 *proceeding.*” *BSD Crown, Ltd. v. Amazon.com, Inc.*, 2024 WL 1120979, at *3 (N.D. Cal. Mar. 14,
 5 2024) (emphasis added). Plaintiffs were neither parties in *Epic* nor in privity with any party there,
 6 so collateral estoppel cannot apply. *See id.* Moreover, the Court’s *trial* findings in *Epic*—on issues
 7 like geographic market definition, monopoly power, and Apple’s pretextual business
 8 justifications—do not control here on a *motion to dismiss*, particularly given the Court’s explicit
 9 recognition that a different plaintiff with a different trial presentation and additional evidence
 10 might succeed where *Epic* did not. *See Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 922
 11 (N.D. Cal. 2021) (“The Court does not find that it is impossible; only that *Epic Games* failed in its
 12 burden to demonstrate Apple is an illegal monopolist.”), *aff’d in part and rev’d in part*, 67 F.4th
 13 946 (9th Cir. 2023).

14 In any event, even setting aside the lack of preclusive effect, the *Epic* decision simply does
 15 not suggest that Plaintiffs’ claims are implausible. For example, as to geographic market definition,
 16 *see* Mot. at 15, Apple admitted at the *Epic* trial that China is a distinct market that fell outside both
 17 Apple’s and *Epic*’s proposed geographic market definitions. *See Epic*, 559 F. Supp. 3d at 990-91.
 18 This admission bolsters the plausibility of Plaintiffs’ alleged market definition here.

19 Next, on monopoly power, *see* Mot. at 15, Apple leans on the Court’s factual findings in
 20 *Epic* regarding aftermarket definition but overlooks two critical distinctions between this case and
 21 *Epic*. *First*, Plaintiffs here allege that iOS App Distribution is a distinct market—not merely an
 22 aftermarket. *See* AC ¶¶ 75-85, 88. *Second*, even if iOS App Distribution were treated as an
 23 aftermarket, Plaintiffs identify the smartphone market as the relevant foremarket and plead facts
 24 satisfying the *Kodak* and *Newcal* factors. *Id.* ¶¶ 66-74; *see Eastman Kodak Co. v. Image Tech.*
 25 *Servs., Inc.*, 504 U.S. 451 (1992); *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038 (9th Cir.
 26 2008). These allegations, taken as true, address *Epic*’s trial presentation failures, which the Court
 27 noted were limited to the aftermarket—and even then, nearly succeeded. *See Epic*, 559 F. Supp.

3d at 955. Moreover, the Ninth Circuit’s recent affirmance of a jury verdict against Google underscores that reasonable jurors can find a relevant market for platform-specific app distribution—there, Android; here, iOS. *See In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 941-43 (9th Cir. 2025).

As for Apple’s proffered procompetitive justifications, *see* Mot. at 16, Plaintiffs allege in detail that Apple’s security and privacy justifications are a pretext for its anticompetitive conduct. *See* AC ¶¶ 3, 89, 263, 309, 323. Plaintiffs further allege that substantially less restrictive alternatives exist and that the anticompetitive effects of Apple’s conduct—found to be “massive” in *Epic*, 559 F. Supp. 3d at 996-1001—far outweigh any procompetitive benefits, AC ¶¶ 309, 323. These allegations raise factual questions for a jury, and Apple offers no reasons why they justify dismissal at this early stage.

2. Plaintiffs Plausibly Allege Their Entitlement to Restitution Under the UCL

Apple argues that Plaintiffs’ UCL claim fails because the Amended Complaint (a) does not establish equitable jurisdiction to seek restitution and (b) requests damages rather than restitution. *See* Mot. at 16-18. Neither argument holds up.

First, Apple relies on *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) to suggest that Plaintiffs cannot seek equitable remedies under the UCL because they also seek legal remedies. *See* Mot. at 16–17. But *Sonner* does not bar a plaintiff from seeking equitable remedies in the alternative to damages at the pleading stage. *See, e.g., Pitre v. Kevita, Inc.*, 2025 WL 2294913, at *8 (N.D. Cal. Aug. 8, 2025) (holding, at the pleading stage, plaintiff could “plead that her legal remedies are inadequate or plead equitable claims in the alternative because [her] legal remedies are inadequate” (internal quotations omitted)). Plaintiffs do just that here. *See* AC ¶¶ 299-346.

Second, Plaintiffs seek restitution—not damages—under the UCL. Apple’s argument to the contrary, *see* Mot. at 17-18, misreads *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149 (2003). *Korea Supply* defines restitution as “replac[ing] any money or property that defendants took directly from plaintiff.” *Id.* at 1149 (emphasis added). Plaintiffs allege Apple

1 directly took illegally high monetary commission fees from them—precisely the type of monetary
 2 harm redressed by restitution. AC ¶¶ 1, 6, 12-13, 29, 49, 187, 215, 219, 260, 277, 308.

3 Apple also wrongly claims that Plaintiffs seek lost profits, which are not recoverable under
 4 the UCL. Mot. at 18 (citing *Apple Inc. v. Pepper*, 587 U.S. 273, 288 (2019)). But *Pepper* neither
 5 limits Plaintiffs to that remedy nor alters the settled distinction between lost profits and
 6 overcharges. Both may be available in antitrust cases, but overcharges—like those alleged here—
 7 are far more typical and easier to prove. *See Meijer, Inc. v. Abbott Lab 'ys*, 2008 WL 4065839, at
 8 *7 (N.D. Cal. Aug. 27, 2008) (noting antitrust plaintiffs can seek both overcharge and lost profits
 9 damages). Plaintiffs allege Apple overcharged them. AC ¶ 335. Seeking recovery of those
 10 overcharges is a claim for restitution—not lost profits. Apple's citation to *Luxottica* is
 11 distinguishable because there the plaintiff sought “compensation for expected but unearned future
 12 income,” not overcharges. *Lee v. Luxottica Retail N. Am., Inc.*, 65 Cal. App. 5th 793, 797 (2021).

13 **B. Plaintiffs' Sherman Act and UCL Claims Are Not Time-Barred**

14 Apple argues Plaintiffs' claims are time-barred because Plaintiffs have not alleged a
 15 continuing violation. Mot. at 10-14. But Apple fundamentally misconstrues Plaintiffs' claims,
 16 disregards binding precedent, and ignores extensive allegations detailing how Apple's
 17 anticompetitive scheme evolved and continued in the four years preceding this lawsuit.

18 Plaintiffs' Sherman Act and UCL claims are subject to a four-year statute of limitations.
 19 15 U.S.C. § 15(b); Cal. Bus. & Prof. Code § 17208. In addition, the four-year statute of limitations
 20 is used as a “guideline” in determining whether antitrust claims for injunctive relief are time-barred
 21 under laches. *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1085-86 (9th Cir. 2014). However, an
 22 exception to the four-year statute of limitations exists for “continuing violations.” *Samsung Elec.*
 23 *Co., Ltd. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir. 2014). To invoke this exception, a
 24 plaintiff must allege a defendant committed an “overt act” during the limitations period—defined
 25 as (a) “a new and independent act that is not merely a reaffirmation of a previous act” that (b)
 26 “inflict[s] new and accumulating injury on the plaintiff.” *Id.* at 1202. Each overt act restarts the
 27 limitations clock, *see Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971), such

that “if a defendant commits the same anticompetitive act multiple times, each new act restarts the statute of limitations for all the acts.” *Klein v. Facebook, Inc.*, 580 F. Supp. 3d 743, 797 (N.D. Cal. 2022) (emphasis in original). Courts apply the same principles in assessing whether antitrust claims for injunctive relief are time-barred under laches. *Oliver*, 751 F.3d at 1086. Similarly, under the continuous accrual doctrine, UCL claims are timely when plaintiffs allege a defendant has inflicted “a series of wrongs or injuries” during the limitations period. *Brodsky v. Apple Inc.*, 445 F. Supp. 3d 110, 136-37 (N.D. Cal. 2020) (recognizing continuous accrual doctrine applies when defendant unlawfully charges plaintiff for payments during the limitations period).

Apple argues that because it first began its anticompetitive policies and practices more than a decade ago, Plaintiffs have not alleged any “new and independent act” occurring after May 2021. Mot. at 10. That is incorrect for multiple reasons.

First, a core part of Apple’s anticompetitive conduct is to require app developers, including Plaintiffs, to agree to the DPLA and App Guidelines, which bar app developers from distributing and selling iOS apps or processing in-app purchases through services other than Apple’s. AC ¶¶ 29-30, 35, 41, 44-45, 111, 146, 185, 197, 290. Apple also requires developers to renew their DPLA every year and pay a fee to continue selling through the App Store. *Id.* ¶ 278. Each of these coercive agreements is a new overt act. For example, the Supreme Court affirmed the Third Circuit’s holding that new antitrust claims accrued each time a defendant “collected rentals on leases and entered into new leases” under an allegedly anticompetitive leasing policy, *see Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 377 F.2d 776, 794-95 (3d Cir. 1967), *aff’d in relevant part*, 392 U.S. 481 n.15 (1968), even though the leases had remained “substantially uniform” for decades, *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 245 F. Supp. 258, 264-65 (M.D. Pa. 1965).

Second, as this Court recently held, each time Plaintiffs are forced to sell their apps or process in-app purchases through Apple—and pay a supracompetitive commission—a new overt act occurs. *See Société du Figaro, SAS v. Apple, Inc.*, No. 4:22-cv-04437-YGR, Dkt. No. 84 at 15 (N.D. Cal. Sept. 13, 2023) (holding plaintiff app developers alleged a continuing violation because “each year they are forced to renew” the DPLA and “every time [app developers] are forced to pay

Apple’s anticompetitive commission rate . . . they suffer a new injury”). This conclusion is consistent with other decisions recognizing that ongoing overcharges constitute continuing violations. *See, e.g., Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 295 (2d Cir. 1979) (“So long as a monopolist continues to use the power it has gained illicitly to overcharge its customers, it has no claim on the repose that a statute of limitations is intended to provide.”); *In re Glumetza Antitrust Litig.*, 611 F.Supp.3d 848, 861 (N.D. Cal. 2020) (noting “most other cases to address this question have concluded that continued overcharges constitute a continuing violation”); *cf. Oliver*, 751 F.3d at 1086 (“[E]ach time a defendant sells its price-fixed product, the sale constitutes a new overt act causing injury to the purchaser and the statute of limitations runs from the date of the act.”).

Apple’s alleged overt acts are not, as Apple characterizes them, the “mere charging of monopoly prices.” Mot. at 14. Rather, they consist of Apple successfully leveraging its monopoly power to coerce app developers into signing new agreements to purchase its services at supracompetitive rates as a condition for accessing the iOS ecosystem. AC ¶¶ 29-30, 35, 41, 44-45, 111, 146, 185, 197, 290. Each supracompetitive commission Apple charges Plaintiffs both advances its anticompetitive scheme and inflicts a new, independently accruing injury. Each such act therefore restarts the statute of limitations. *See Figaro*, Dkt. No. 84 at 15; *Oliver*, 751 F.3d at 1086.

Nor is Apple’s conduct the mere “passive receipt of profits,” as Apple’s own cited cases demonstrate. *See, e.g., Eichman v. Fotomat Corp.*, 880 F.2d 149, 160 (9th Cir. 1989) (plaintiff failed to show that defendant “had the ability [to] and actually did enforce the tie” during the limitations period (quoting *Airweld, Inc. v. Airco, Inc.*, 742 F.2d 1184 at 1190) (alteration in original)); *Stanislaus Food Prods. Co. v. USS-POSCO Indus.*, 2010 WL 3521979, at *17 (E.D. Cal. Sept. 3, 2010) (concluding the unlawful conduct alleged—a merger occurring in the pre-limitations period—“occurred but one, single time” and so did not establish a continuing violation); *Crowder v. LinkedIn Corp.*, 2023 WL 2405335, at *3 (N.D. Cal. Mar. 8, 2023) (holding claims based on pre-limitations period agreement between competitors to allocate the market were

time-barred because plaintiffs alleged only charging of monopoly prices during the limitations period).

Third, Plaintiffs allege Apple repeatedly enforced its restrictive policies against app developers within the limitations period—actions intended to police and punish developers Apple viewed as noncompliant. AC ¶¶ 278-97. Under established law, such ongoing enforcement constitutes a continuing violation where, as alleged here, it harms competition by preventing competitors from gaining market share. *See id.* ¶¶ 259-70; *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299, 1300-01 (new overt act occurred each time tour operators shepherded tourists away from the plaintiffs’ shop); *Gamboa v. Apple Inc.*, 2025 WL 660190, at *1, 3 (N.D. Cal. Feb. 28, 2025) (ongoing enforcement of file restrictions constituted continuing violations).

Fourth, Plaintiffs allege a host of additional new anticompetitive acts that Apple engaged in during the limitations period—each independently satisfying the overt act requirement. *See, e.g.*, AC ¶¶ 6, 209-50, 284, 287, 289, 294; *see also Samsung*, 747 F.3d at 1202-04. Tellingly, Apple’s brief makes no mention of most of this additional conduct that conclusively establishes Apple’s continuing violations.

For example, Plaintiffs allege that Apple violated the Court’s first *Epic* injunction—issued September 10, 2021, effective January 16, 2024—by implementing several new, anticompetitive tactics. *See* AC ¶¶ 6, 209-50. This Court already concluded that these new, post-injunction practices were anticompetitive. *See id.* ¶¶ 251-52. Apple’s suggestion that Plaintiffs were required to challenge this conduct by 2013—years before it even occurred—is illogical.

The Amended Complaint is also replete with allegations that Apple’s anticompetitive scheme constantly evolved. *See, e.g., id.* ¶¶ 284, 287, 289, 294. These tactics, including Apple’s violations of the first injunction, are part of Apple’s broader scheme to maintain and expand its monopoly power in the markets for iOS App Distribution and iOS App Payment Processing, thereby allowing Apple to charge Plaintiffs and members of the Class supracompetitive commissions. *Nationwide Power Sols. Inc. v. Eaton Elec. Inc.*, 2008 WL 11408997, at *3 n.3 (C.D. Cal. Oct. 10, 2008) (plaintiff plausibly alleged new overt acts through allegations “of a broader

1 anticompetitive scheme”); *Klein*, 580 F. Supp. 3d at 797 (repeated conduct that “had a significant
2 effect on competition” contributed to consumers’ injury).

3 Apple’s reliance on *SaurikIT, LLC v. Apple Inc.*, 2022 WL 1768845, at *2 (N.D. Cal.
4 May 26, 2022), Mot. at 11-13, is misplaced. That case involved a competing app store, not app
5 developers like Plaintiffs (who are repeatedly subject to Apple’s restrictive agreements and
6 overcharges). *Id.* at *2. Apple successfully argued in its motion to dismiss SaurikIT’s claims that
7 its initial policy excluded SaurikIT’s product starting in 2008. *SaurikIT, LLC v. Apple Inc.*,
8 4:20-cv-08733-YGR, Dkt. No. 74 at 7-10 (N.D. Cal. Feb. 2, 2022). Because SaurikIT “had no
9 relationship at all with Apple” after Apple initially established its anticompetitive policy, Apple
10 argued any future enforcement of the same policy could not create “new and accumulating injury”
11 to the plaintiff because SaurikIT simply continued to suffer exclusion from its alleged relevant
12 markets. *Id.*; *see also SaurikIT*, 2022 WL 1768845, at *1-3. And, particularly relevant here, Apple
13 argued that its reinforcement of its DPLA policies and its warranties with iPhone customers within
14 the limitations period did not create accumulating injury to *SaurikIT* because it was “neither a
15 consumer *nor an app developer*” and did “not allege *it* ha[d] ever been subject to the alleged tie.”
16 *Id.* at 9-10 (emphases added). As Apple’s prior argument concedes, Plaintiffs are app developers
17 that must annually agree to Apple’s DPLA and App Guidelines, AC ¶¶ 21, 26-27, 35, 40, 47, 185,
18 278, and suffer new and accumulating injuries each time Apple subjects them to the restrictive
19 policies contained therein, *see Figaro*, Dkt. No. 84 at 15.

20 Apple contends *Samsung* requires Plaintiffs to show a “new provision or expansion” of
21 Apple’s agreements during the limitations period. Mot. at 13 & n.4. Not so. In *Samsung*, plaintiffs
22 challenged defendants’ anticompetitive licensing policy, which was established by a pre-
23 limitations period 2003 license. 747 F.3d at 1201-02. Though *Samsung* held that defendants’ 2006
24 license, which expanded the 2003 license to cover new products, was one way to establish an overt
25 act, the court further held that *even if* the 2006 license were a mere reaffirmation of the 2003
26 license, “[w]hen the SD Defendants approached Samsung and required it to make license
27

1 payments—whether under a new 2006 license or under the 2003 license—those acts caused
2 independent harm and accumulating injury.” *Id.* at 1204.

3 As this Court noted, *SaurikIT* is distinguishable from *Samsung* because in *Samsung* the
4 parties had a “preexisting relationship” that was further enforced during the limitations period. *See*
5 2022 WL 1768845, at *3. The same reasoning applies here: Plaintiffs have a preexisting
6 relationship with Apple, and, during the limitations period, Apple has repeatedly enforced its
7 restrictive terms directly on Plaintiffs. *See Samsung*, 747 F.3d at 1204 (“We have repeatedly held
8 that acts taken to enforce a contract were overt acts that restarted the statute of limitations.”). Thus,
9 under *Samsung* and the precedent on which it relies, Apple’s continued collection of
10 supracompetitive commissions pursuant to its ongoing monopolistic conduct constitutes overt acts.
11 Any other result would give Apple license to repeatedly and profitably violate the antitrust laws in
12 perpetuity.

13 **C. This Court Should Hear and Decide the Foreign-Law Claims on Their Merits**

14 Apple wrote the DPLA. Its terms are not negotiable. Apple required developers to agree
15 that any disputes they had with Apple would need to be resolved in California. Plaintiffs complied
16 with this contractual requirement and filed their suit here.

17 Apple now improperly seeks to avoid the obligations it wrote into its own contract—even
18 though Apple successfully enforced its forum selection clause in Japan against a different
19 Japanese plaintiff that sued under a similar Japanese law theory. As explained further below, this
20 Court should retain jurisdiction and hold Apple to the lawful and enforceable terms of the contract
21 that Apple itself wrote.

22 **1. Apple’s Forum Selection Clause Compels Litigation in This Court**

23 This Court is the proper forum to hear and decide Plaintiffs’ foreign law claims.

24 In the DPLA, Apple selected the courts within the Northern District of California as the
25 exclusive forum for “[a]ny litigation or other dispute resolution between You and
26 Apple . . . arising out of or relating to this Agreement, the Apple Software, or Your relationship
27 with Apple.” Kleinbrodt Decl. Ex. 1 § 14.10. Under the DPLA’s severability clause, its forum

1 selection clause remains enforceable even if the choice-of-law clause is unenforceable in whole
2 or in part. *See id.* § 14.6.

3 Apple does not dispute that the forum selection clause applies to Plaintiffs’ claims, and
4 Apple offers no contractual basis to invalidate it. Instead, Apple asks that this Court relinquish
5 jurisdiction on grounds of international comity. This Court should deny that relief based on the
6 doctrine of judicial estoppel and under the ordinary international comity analysis.

7 Consider judicial estoppel first. Dismissing the foreign claims would allow Apple to benefit
8 improperly from taking conflicting positions before this Court and in Japan. More specifically, in
9 2014, Shimano sued Apple in the Tokyo District Court. Hayashi Decl. Ex. D at 1; Hayashi Decl.
10 at 4-5.⁴ Like Plaintiff OverX, AC ¶¶ 381-88, Shimano alleged that Apple’s “violation of [Japan’s]
11 Antimonopoly Act” was “the illegality forming the basis for [a] tort claim” under Japanese law.
12 Hayashi Decl. Ex. F at 5. Apple sought to enforce a clause selecting *this District* as the forum and
13 represented that, “[a]ccording to case law in the United States, there are numerous cases in which
14 courts have accepted and adjudicated on [sic] cases involving issues governed by Japanese law
15 and other foreign laws, and it is therefore possible for the courts of the United States to render a
16 judgment in the present litigation [i.e., the litigation with Shimano].” Hayashi Decl. Ex. D at 6;
17 *see also* Hayashi Decl. Ex. F at 2 (incorporating into the High Court’s decision the portion of the
18 lower court interlocutory decision that summarizes Apple’s argument); *see also* Hayashi Decl.
19 at 4. The Tokyo High Court granted Apple’s request and enforced the forum selection clause over
20 Shimano’s objection. Hayashi Decl. Ex. F at 5.

21 When a party benefits from taking opportunistic, inconsistent positions before multiple
22 tribunals, it “uniquely implicate[s] and threaten[s]” the integrity of judicial proceedings. *Rissetto*
23 *v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 603-04 (9th Cir. 1996). Courts have the
24 authority “to protect [themselves] from manipulation” through judicial estoppel, which is
25 especially appropriate when conflicting positions are taken across different cases. *Id.* Allowing

26
27 ⁴ “Hayashi Decl.” and “Lee Decl.” refer to the declarations submitted by Plaintiffs in support of
their opposition to Apple’s motion.

1 Apple to renege on its representations to the Japanese court system—representations Apple did
2 not disclose to this Court—would not only reward opportunism but also discourage foreign courts
3 from honoring U.S. forum selection clauses in the future.

4 Separately, international comity *favors* enforcing the DPLA’s forum selection clause.
5 Apple’s comity argument conflates the two distinct doctrines of international comity: adjudicative
6 comity and prescriptive comity. *See Mujica v. AirScan Inc.*, 771 F.3d 580, 598 (9th Cir. 2014).
7 When properly applied, these doctrines confirm that this District is the proper forum to hear and
8 decide Plaintiffs’ claims by applying foreign law. *See infra* § IV.C.2 (discussing prescriptive
9 comity).

10 Adjudicative comity is a “discretionary act of deference by a national court to decline to
11 exercise jurisdiction in a case properly adjudicated in a foreign state.” *Cooper v. Tokyo Elec. Power*
12 *Co. Holdings Inc.*, 960 F.3d 549, 566 (9th Cir. 2020). In applying this doctrine, courts look to a
13 nonexclusive “range of factors,” focusing on the strength of the United States’ interest, the strength
14 of the foreign governments’ interests, and the adequacy of the alternative forum. *Mujica*, 771 F.3d
15 at 600. These factors favor retaining jurisdiction.

16 *First*, the United States has a “strong policy in favor of enforcing forum selection clauses.”
17 *Applied Med. Distrib. Corp. v. Surgical Co. BV*, 587 F.3d 909, 914 (9th Cir. 2009). Such clauses
18 are “indispensable” in “international trade, commerce, and contracting,” *Mitsubishi Motors Corp.*
19 *v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 630 (1985), and “should be given full effect”
20 when freely and fairly negotiated, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 591 (1991)
21 (internal quotations omitted). U.S. courts will “not extend comity to foreign proceedings when
22 doing so would be contrary to the policies of the United States[.]” including the “strong U.S.
23 interest favoring enforcement of . . . forum selection clauses.” *Mujica*, 771 F.3d at 607. This
24 policy is so strong that U.S. courts often *enjoin* foreign proceedings that violate U.S. forum
25 selection clauses. *See, e.g., E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 994 (9th
26 Cir. 2006); *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 887 (9th Cir. 2012).

1 *Second*, the foreign jurisdictions’ public policies do not require *Plaintiffs* to bring this suit
 2 in their national courts; instead, those sovereigns’ policies are directed at prohibiting *Apple* from
 3 completely evading their substantive laws. Thus, the Tokyo High Court held that, in tort cases
 4 premised on Antimonopoly Act violations, a forum selection clause is enforceable unless “the
 5 specific result of applying all the relevant legal norms governed by th[e] [court of the chosen
 6 jurisdiction] to the facts alleged in the lawsuit is so far removed from the specific result of applying
 7 all the relevant legal norms, including the Antimonopoly Act, governed by the Japanese courts,
 8 that it is unacceptable from the perspective of maintaining public order in relation to the
 9 Antimonopoly Act.” Hayashi Decl. Ex. B at 5; Hayashi Decl. at 2-4. Applying this standard, the
 10 Tokyo High Court has enforced a Michigan forum selection clause because it had confidence that
 11 U.S. courts could apply the governing law without unacceptably diverging from the requirements
 12 of maintaining Japanese public order. Hayashi Decl. Ex. B at 5; Hayashi Decl. at 2-4.

13 In Korea, courts also decline to enforce forum selection clauses when doing so would allow
 14 a party to “evade the application of mandatory legal provisions.” Lee Decl. at 5. The Seoul High
 15 Court, for example, held that a California forum selection clause was valid and enforceable, even
 16 though the plaintiff attempted to allege a violation of the Monopoly Regulation and Fair Trade
 17 Act, on the ground “that it can’t be deemed to be against the public order and good morals of the
 18 Republic of Korea to recognize exclusive jurisdiction of a foreign court just because the Plaintiff
 19 is asserting the violation of the Fair Trade Act.” Lee Decl. Ex. B at 6; Lee Decl. at 8. The true
 20 threat to international comity would be if this Court *declined* jurisdiction and refused to entertain
 21 Plaintiffs’ foreign law claims, which would have the undesirable effect of discouraging foreign
 22 courts from enforcing U.S. forum selection clauses.

23 Apple does not cite a single decision where a court has invoked adjudicative comity as a
 24 basis for declining to enforce an otherwise enforceable U.S. forum selection clause (and
 25 undersigned counsel are aware of none, except in the unique circumstances posed by foreign
 26 bankruptcies. *See JP Morgan Chase Bank v. Altos Hornos de Mex., S.A. de C.V.*, 412 F.3d 418,
 27 424 (2d Cir. 2005). If this Court were to grant the unprecedented relief Apple seeks, it would

discourage foreign courts from honoring U.S. forum selection clauses in the future—jeopardizing the very comity principles Apple invokes.

2. Assuming *Figaro* Establishes the Extraterritorial Limits of U.S. Antitrust Law, the Non-U.S. Sales Are Governed by Foreign Law

Upon exercising jurisdiction, if U.S. substantive law cannot be applied, this Court can and should properly apply Korean and Japanese substantive law for transactions outside the U.S. App Store storefront.

For those transactions, Apple mistakenly argues that Plaintiffs cannot proceed in this Court under the substantive law of *any* jurisdiction. Under Apple’s erroneous logic, the Foreign Trade and Antitrust Improvements Act (“FTAIA”) forbids the application of U.S. antitrust law to those transactions; at the same time, Apple asserts that the DPLA’s choice-of-law clause represents a “contractual commitment to pursue only U.S.-law claims” and that “[g]iving effect to that provision” would mean that Plaintiffs cannot recover under the law of any jurisdiction *other* than the United States. *See* Mot. at 17-18.

If the FTAIA does allow Plaintiffs to invoke the protections of the chosen U.S. and California law, through claims under the Sherman Act and UCL, then Plaintiffs should be given leave to replead those causes of action. Fed. R. Civ. P. 15(a)(2). However, if Apple is correct that the FTAIA bars application of U.S. antitrust law, then foreign substantive law must govern because Apple cannot “convert a choice of law clause into a choice of *no law* clause,” *Hayes v. Delbert Servs. Corp.*, 811 F.3d 666, 675 (4th Cir. 2016) (emphasis added).

This result is required by at least four separate *domestic* legal doctrines that are binding on this Court.

First, this result is required by California choice-of-law rules binding on this Court. “A federal court sitting in diversity must look to the forum state’s choice of law rules to determine the controlling substantive law.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001). If the FTAIA bars application of U.S. substantive law, then California choice-of-law rules would select foreign substantive law because (a) applying *no law* would be “contrary to the

fundamental policy of” those jurisdictions; (b) the United States’ interests are not *impaired* but are actually *advanced* by the application of foreign law in situations where the FTAIA prohibits application of U.S. law, *see F. Hoffmann-La Roche Ltd. v. Empagran*, 542 U.S. 155, 165-66 (2004); and (c) foreign law would govern absent agreement. *See Nedlloyd Lines B.V. v. Superior Ct.*, 3 Cal. 4th 459, 464 (Cal. 1992) (adopting Second Restatement of Conflict of Laws § 187); *see also* Lee Decl. at 12-14; Hayashi Decl. at 6-7.

Second, this result is required by California contract law, which the DPLA chose as the governing law, because the DPLA choice choice-of-law clause cannot prospectively release Apple from liability for violations of law, *R.H. v. Los Gatos Union Sch. Dist.*, 33 F. Supp. 3d 1138, 1166-68 (N.D. Cal. 2014); such a prospective release would need to be “clear, unambiguous, and explicit” about what is released, *id.*; and any ambiguity in the DPLA should be construed against Apple as the contract’s drafter, Cal. Civ. Code, § 1654.

Third, Apple’s preferred result would run counter to U.S. public policy by allowing the “choice-of-forum and choice-of-law clauses [to] operate[] in tandem as a prospective waiver of a party’s right to pursue statutory remedies for antitrust violations.” *Mitsubishi*, 473 U.S. at 637 n.19.

Fourth, Apple’s preferred result would be contrary to the doctrine of prescriptive international comity. Prescriptive comity “guides domestic courts as they decide the extraterritorial reach of federal statutes.” *Mujica*, 771 F.3d at 598. In the antitrust context, prescriptive comity *prevents* “American law [from] supplant[ing]” foreign law in regulating foreign transactions that have no domestic effects. *Empagran*, 542 U.S. at 165-66. To allow a U.S. choice-of-law clause to supplant foreign law and replace it with *no law at all* would perversely defeat the principles of prescriptive international comity recognized in *Empagran* and expressed in the FTAIA itself. *See id.*

Apple argues that this Court will face “difficulties” in resolving foreign law claims here. *See* Mot. at 20-21. But federal courts routinely decide foreign law questions. *See* Fed. R. Civ. P. 44.1; *In re Disaster at Riyadh Airport, Saudi Arabia, on Aug. 19, 1980*, 540 F. Supp. 1141, 1153-

54 (D.D.C. 1982) (“Federal courts are experienced in applying foreign law and should not be reluctant to do so.”); *Abdallah v. Int’l Lease Fin. Corp.*, 2015 WL 13917968, at *25 (C.D. Cal. Aug. 5, 2015) (“[W]e must guard against an excessive reluctance to undertake the task of deciding foreign law, a chore federal courts must often perform.”). Here, any asserted “difficulties” in litigating foreign law claims in this Court are belied by the fact that Apple does not dispute that the Amended Complaint has alleged facts sufficient to state a cause of action under Japanese and Korean law. *See* AC ¶¶ 347-88.

This Court should not allow Apple to use speculative concerns about the supposed difficulty of applying foreign law as a vehicle to evade the consequences of its conduct and its chosen contractual terms. Given this Court’s experience overseeing related lawsuits, no court in the world is better positioned to resolve this case fairly and efficiently than this Court.

3. This Court Should Not Bifurcate or Stay the Foreign-Law Claims

Apple asks to stay the foreign law claims “while the Korean and Japanese Plaintiffs seek relief in their nations’ courts,” Mot. at 24, but again, there is no lawful basis to require Plaintiffs to litigate their claims in any forum other than the one Apple itself wrote into the DPLA.

Moreover, Apple’s request to bifurcate the foreign-law claims is premature at best. Apple asks to bifurcate the foreign-law claims purportedly because “resolving the Sherman Act and UCL claims first . . . could drive—and potentially eliminate or narrow—foreign law issues,” *id.*, but Apple offers no basis for that speculative assertion. And Apple argues that bifurcation could simplify presentation for the Court or a jury, but there is no reason for this Court to resolve matters of trial presentation at this early stage. *See infra* § IV.E.

D. KPA and KEPA Have Associational Standing

KPA and KEPA have associational standing because: “(a) [their] members would otherwise have standing to sue in their own right; (b) the interests [each organization] seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). Apple does not contest any of these factors (and

1 thus has waived any arguments that KPA and KEPA do not satisfy the *Hunt* factors. *Chamber of*
 2 *Com. of the U.S. of Am. v. City of Seattle*, 890 F.3d 769, 779 n.5 (9th Cir. 2018) (issue not raised
 3 in an opening brief are waived). Instead, Apple asserts that associational standing requires
 4 “specific allegations establishing that at least one *identified member* . . . would suffer harm.” Mot.
 5 at 6 (emphasis and omission in original).

6 Yet the Ninth Circuit squarely rejects that argument. Where, as here, “it is clear and not
 7 speculative that a member of a group will be adversely affected by a challenged action and a
 8 defendant does not need to know the identity of a particular member to defend against an
 9 organization’s claims, *the organization does not have to identify particular injured members by*
 10 *name.*” *Mi Familia Vota v. Fontes*, 129 F.4th 691, 708 (9th Cir. 2025) (emphasis added). Thus,
 11 KPA and KEPA need not identify particular injured members at this stage; just that their members
 12 have been affected. And the Amended Complaint details exactly how Apple’s anticompetitive
 13 conduct harms *all* iOS App developers, including those who are members of KPA or KEPA. *See*
 14 AC ¶¶ 30, 35, 259-77.

15 Apple relies on *Satanic Temple v. Labrador*, 2025 WL 2524437 (9th Cir. Sept. 2, 2025),
 16 to argue KPA and KEPA do not allege enough to establish associational standing, but that
 17 unpublished decision is inapposite. The plaintiff in *Satanic Temple* alleged only that “*based on*
 18 *probability*, one or more individual members is at risk of harm from Idaho’s laws.” *Id.* at *4
 19 (emphasis added). “This estimate, and the causal chain required to reach it,” the court concluded,
 20 “are too attenuated and speculative to confer standing.” *Id.* As noted, the opposite is true here—
 21 Plaintiffs allege that Apple’s conduct directly and measurably impacts *every* iOS app developer,
 22 which definitionally includes KPA’s and KEPA’s app developer members. This is a *certainty*, not
 23 a *probability*.

24 Indeed, Apple itself previously argued in briefing to the Ninth Circuit that “software
 25 developers who are directly impacted by Apple’s 30% commission absolutely would have antitrust
 26 standing to bring a monopolization case.” AC ¶ 274 (quoting *In re Apple iPhone Antitrust Litig.*,
 27 No. 14-15000, Dkt. No. 15-1 (9th Cir. July 11, 2014)). Apple cannot now contend that KPA’s and

1 KEPA’s allegations that one or more of their app-developer members “paid supra-competitive
2 commissions” (among other injuries) are insufficient to confer standing.

3 Apple specifically challenges KPA and KEPA’s standing to seek injunctive relief under
4 Section 16 of the Clayton Act, Mot. at 6, but Apple’s only authority for the proposition that KPA
5 and KEPA cannot seek such relief is a decades-old, non-precedential opinion that explicitly based
6 its holding on “the absence of clear Ninth Circuit or Supreme Court authority extending *Hunt* to
7 antitrust cases.” *Fin. & Sec. Prods. Ass’n v. Diebold, Inc.*, 2005 WL 1629813, at *3 (N.D. Cal.
8 July 8, 2005). But “[e]very other circuit that has considered the issue since *Hunt* has held that
9 associational standing is proper [to seek injunctive relief] under Section 16.” *Am. Booksellers*
10 *Ass’n v. Houghton Mifflin Co.*, 1995 WL 92270, at *3 n.3 (S.D.N.Y. Mar. 3, 1995) (surveying
11 First and Second Circuit decisions); *see also Sw. Suburban Bd. of Realtors, Inc. v. Beverly Area*
12 *Planning Ass’n*, 830 F.2d 1374, 1380 (7th Cir. 1987); *Figaro*, Dkt. No. 84 at 11-12 (concluding
13 French online-publishers association had standing to pursue antitrust claims on behalf of
14 “members who have developed apps to sell on the App Store”); *Chamber of Com. of U.S. v. City*
15 *of Seattle*, 274 F. Supp. 3d 1155, 1161 (W.D. Wash. 2017) (“[A]n association may seek an
16 injunction under § 16 on behalf of its members as long as it satisfies the *Hunt* test.”), *rev’d in part*
17 *on other grounds and remanded sub nom. Chamber of Com. of the U.S. of Am. v. City of Seattle*,
18 890 F.3d 769 (9th Cir. 2018).

19 **E. Plaintiffs’ Claims Should Not Be Stayed Pending Resolution of the *Epic* Appeal**

20 Finally, Apple argues that if its Motion to Dismiss is denied, the Court should stay these
21 proceedings until the Ninth Circuit resolves Apple’s appeal from the civil contempt order in *Epic*
22 *Games, Inc. v. Apple Inc.*, No. 25-02935 (9th Cir.). Mot. at 24-25. But Apple fails to show that this
23 is one of those “rare circumstances” in which “[a] stay pending the resolution of another case is
24 appropriate,” *Ass’n of Irrigated Residents v. EPA*, 2018 WL 3548885, at *2 (N.D. Cal. July 24,
25 2018) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). The competing interests that must
26 be weighed all militate strongly against a stay.

1 *First*, Apple ignores “the possible damages [to Plaintiffs] which may result from the
 2 granting of a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005). Plaintiffs seek
 3 not only damages for past harm but also, crucially, “injunctive relief against ongoing and future
 4 harm.” *Id.* at 1112. Apple’s assertion that Plaintiffs have not requested “urgent relief,” Mot. at 25,
 5 misses the point. Courts recognize that a stay is inappropriate where ongoing harms are alleged.
 6 *See, e.g., Avery v. TEKsystems, Inc.*, 757 F. Supp. 3d 973, 978 (N.D. Cal. 2024) (denying motion
 7 to stay proceedings where “class members ha[d] a strong interest in moving their claims forward”
 8 because “the suit include[d] allegations of ongoing and future harms . . . as opposed to alleging
 9 only past harms”). A stay would permit Apple to continue profitably harming competition, further
 10 injuring Plaintiffs and risking the loss of evidence. *See LG Elecs., Inc. v. Eastman Kodak Co.*,
 11 2009 WL 1468703, at *2 (S.D. Cal. May 26, 2009) (denying motion for stay and noting the danger,
 12 “inherent in any stay,” “of prejudice resulting from the loss of evidence, including the inability of
 13 witnesses to recall specific facts” (internal quotation omitted)).

14 *Second*, Apple has not shown any “hardship or inequity which [Apple] may suffer in being
 15 required to go forward.” *Lockyer*, 398 F.3d at 1110 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265,
 16 268 (9th Cir. 1962)). “[I]f there is even a fair possibility that the stay . . . will work damages to
 17 some one else,’ the party seeking the stay ‘must make out a clear case of hardship or inequity.’”
 18 *Id.* at 1112 (quoting *Landis*, 299 U.S. at 255). Apple’s sole justification—that defending this case
 19 will require “substantial time and expense,” Mot. at 25, is insufficient. “[B]eing required to defend
 20 a suit, without more, does not constitute a ‘clear case of hardship or inequity.’” *Id.* at 1112.
 21 Moreover, Apple overstates its potential burden. Discovery, class certification briefing, and
 22 summary judgment briefing all will be “required regardless of the outcome” in Apple’s pending
 23 appeal. *Cabiness v. Educ. Fin. Sols., LLC*, 2017 WL 167678, at *3 (N.D. Cal. Jan. 17, 2017)
 24 (quoting *Lathrop v. Uber Techs., Inc.*, 2016 WL 97511, at *4 (N.D. Cal. Jan. 8, 2016)). Any effort
 25 avoided by a stay therefore would be merely deferred, not eliminated.

26 *Third*, waiting for the Ninth Circuit’s resolution of Apple’s appeal will not
 27 “simplify[] . . . issues, proof, [or] questions of law” presented by this case. *Lockyer*, 398 F.3d

at 1110 (quoting *CMAX*, 300 F.2d at 268). Apple’s appeal focuses on, *inter alia*, whether this Court (a) “erred in issuing . . . a new and broader injunction banning Apple from charging any commission for external link purchases or instituting reasonable guidelines applicable to such purchases” or (b) “erred in finding Apple in civil contempt.” Opening Br. for Apple Inc., *Epic Games, Inc. v. Apple Inc.*, No. 25-02935, Dkt. No. 59.1 at 6 (9th Cir. June 23, 2025). Those legal questions concerning the scope and enforcement of prior injunctive relief have little bearing on Plaintiffs’ broader claims in this case, which center on Apple’s ongoing and longstanding anticompetitive conduct. *Compare* AC ¶¶ 210-50 (detailing Apple’s continued anticompetitive conduct, including imposing new external purchase link placement and design restrictions, requirements that induce purchase-flow friction, and limitations on iOS App developers’ ability to use calls to action), *with id.* ¶¶ 111-203, 259-70 (detailing Apple’s longstanding anticompetitive conduct). Although there is some factual overlap, the issues on appeal do not “clarify—or foreclose—key parts of this case,” “alter the framework for evaluating Apple’s defenses,” or “narrow the scope of discovery and the issues in dispute,” Mot. at 25, nor will they even “provide substantial guidance that will impact the court’s decisions in this case,” *Babaria v. Blinken*, 2023 WL 187497, at *2 (N.D. Cal. Jan. 13, 2023).

V. CONCLUSION

For all the above reasons, Apple’s Motion to Dismiss should be denied in its entirety.

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Respectfully submitted,
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ATTESTATION

I, Christopher L. Lebsock, am the ECF User whose ID and password are being used to file this document. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that all counsel have concurred in this filing.

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