

1 THEODORE J. BOUTROUS JR.,
SBN 132099
2 tboutrous@gibsondunn.com
DANIEL G. SWANSON, SBN 116556
3 dswanson@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
4 333 South Grand Avenue
Los Angeles, CA 90071
5 Telephone: 213.229.7000
Facsimile: 213.229.7520
6

7 JULIAN W. KLEINBRODT,
SBN 302085
jkleinbrodt@gibsondunn.com
8 GIBSON, DUNN & CRUTCHER LLP
555 Mission Street
9 San Francisco, CA 94105
Telephone: 415.393.8200
10 Facsimile: 415.393.8306
11

CYNTHIA E. RICHMAN (D.C. Bar No.
492089; *pro hac vice*)
crichman@gibsondunn.com
HARRY R. S. PHILLIPS (D.C. Bar No.
1617356; *pro hac vice*)
hphillips2@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

MARK A. PERRY, SBN 212532
mark.perry@weil.com
JOSHUA M. WESNESKI (D.C. Bar No.
1500231; *pro hac vice pending*)
joshua.wesneski@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Telephone: 202.682.7000
Facsimile: 202.857.0940

12 **Attorneys for Defendant APPLE INC.**

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 EPIC GAMES, INC.

18 Plaintiff, Counter-defendant
19 v.

20 APPLE INC.,

21 Defendant, Counterclaimant
22
23
24
25
26
27
28

Case No. 4:20-cv-05640-YGR

**DECLARATION OF MATTHEW
FISCHER REGARDING COMPLIANCE
WITH UCL INJUNCTION**

The Honorable Yvonne Gonzalez Rogers

1 I, Matthew Fischer, hereby declare as follows:

2 1. I am the Vice President, Head of Worldwide App Store at Apple Inc. and am
3 responsible for, among other things, overseeing Apple’s App Store business. Prior to my current
4 position, I was the Director, Marketing and Partnerships, for iTunes. Over my 20 years at Apple,
5 I have helped guide the growth and development of Apple’s key products and services, including
6 the App Store. In my current role, I work extensively on all matters related to the App Store and
7 have a deep knowledge and understanding of the design and operation of the App Store. I have
8 personal knowledge of the facts testified to herein.

9 **APPLE HAS COMPLIED WITH THE INJUNCTION**

10 2. On September 10, 2021, this Court entered an injunction against Apple, enjoining
11 Apple from “prohibiting developers from (i) including in their apps and their metadata buttons,
12 external links, or other calls to action that direct customers to purchasing mechanisms, in addition
13 to In-App Purchas[e] [‘IAP’] and (ii) communicating with customers through points of contact
14 obtained voluntarily from customers through account registration within the app.”

15 3. Apple has complied with the injunction as set forth herein.

16 4. With respect to part (i) of the injunction, Apple has modified the App Store Review
17 Guidelines to permit developers to include in their apps buttons or external links with calls to
18 action that direct customers to purchasing methods in addition to IAP. Specifically, Apple has
19 created a new “StoreKit External Purchase Link Entitlement (US)” (the “Link Entitlement”),
20 which permits any developer to include in apps on the U.S. storefronts of the iOS and iPadOS App
21 Stores information about alternative purchase options and a link to the developer’s external
22 website.

23 5. With respect to part (ii) of the injunction, Apple has revised its Guidelines to permit
24 developers to communicate with users outside of the app about purchasing methods other than
25 IAP, including through points of contact obtained through account registration within the app and
26 with the user’s consent.

27 6. Below, I have provided a more detailed explanation of these changes as well as
28

1 certain requirements that Apple has implemented to protect users and the integrity of iOS and
2 iPadOS.

3 **GUIDELINES 3.1.1 AND 3.1.3 IN CONTEXT**

4 7. Apple has long required that all iOS and iPadOS apps developed using Apple’s
5 proprietary tools and technologies protected by intellectual property use IAP for in-app
6 transactions for digital goods and services.

7 8. Developers are permitted to offer digital goods and services outside an app that can
8 be consumed within the app. For example, a game developer may sell tokens on its website that
9 can be redeemed during game play in its app.

10 9. Developers are permitted to include in their apps external links to websites for
11 certain non-transaction purposes, such as customer support or account management.

12 10. Developers are permitted to communicate with customers outside the app on any
13 subject, including alternative purchase mechanisms.

14 11. The App Review Guidelines at issue here prohibited developers from (i) including
15 an external link (or button, or call to action) within an app directing customers to alternative
16 purchase mechanisms outside the app (former Guideline 3.1.1), and (ii) using contact information
17 obtained within the app (such as during registration) to facilitate communications outside the app
18 (former Guideline 3.1.3).

19 12. The Court prohibited Apple from enforcing in the United States the two provisions
20 just described. Accordingly, Apple is amending the Guidelines applicable to apps on the U.S.
21 storefronts of the iOS and iPadOS App Stores as set forth below.

22 **PART (i) – THE LINK ENTITLEMENT**

23 13. Apple is adopting new Guideline 3.1.1(a):

24 3.1.1(a) Link to Other Purchase Methods

- 25 • Developers may apply for an entitlement to provide a link in their app to a website the
26 developer owns or maintains responsibility for in order to purchase such items. Learn
27 more about the entitlement. In accordance with the entitlement agreement, the link
28 may inform users about where and how to purchase those in-app purchase items, and

1 the fact that such items may be available for a comparatively lower price. The
2 entitlement is limited to use only in the iOS or iPadOS App Store on the United States
3 storefront. In all other storefronts, apps and their metadata may not include buttons,
external links, or other calls to action that direct customers to purchasing mechanisms
other than in-app purchase.

4 If your app engages in misleading marketing practices, scams, or fraud in relation to
5 the entitlement, your app will be removed from the App Store and you may be removed
6 from the Apple Developer Program.

7 14. The Link Entitlement allows developers to include in their apps buttons or links
8 with calls to action directing users to out-of-app purchasing mechanisms, other than IAP, for
9 transactions for digital goods and services (“External Purchase Links”). The Link Entitlement is
10 available only for apps on the iOS and iPadOS App Stores, in the U.S. storefronts.

11 15. An “entitlement” is a right or privilege granted to a developer to activate certain
12 features, capabilities, technologies, or functionalities for its app not otherwise available to
13 developers. Entitlements are offered only for limited uses, and developers must make a specific
14 request that details the intended use of the entitlement. Apple requires entitlements where privacy,
15 safety, and security concerns are heightened or where a requested feature carries additional risk to
16 users. This is in order to understand that a developer is intending to utilize an entitlement for a
17 specific app, and to confirm that apps do not include features that have not been approved.

18 16. To take advantage of the Link Entitlement, developers must provide Apple with
19 details about their app, the proposed External Purchase Link, and the website to which users will
20 be directed. Developers must also agree to the terms and conditions of the Link Entitlement, which
21 are set forth in an addendum to the DPLA titled the “StoreKit External Purchase Link Entitlement
22 Addendum for US Apps.”

23 17. Developers applying for the Link Entitlement must certify that the third-party
24 payment services provider(s) they have contracted with for the execution of out-of-app purchases
25 meets Level 1 Payment Card Industry compliance. These are well-established standards,
26 promulgated by a council of representatives from companies with global payment networks, such
27
28

1 as American Express, MasterCard, Visa, Discover, and JCB.

2 18. Developers must further certify to Apple that the digital goods and services users
3 purchase on their website marketed for use in an app can be used within the app, and that they will
4 provide users with processes for disputing unauthorized transactions, managing subscriptions, and
5 requesting refunds for purchases made through the External Purchase Link.

6 19. Apps participating in the Apple Video Partner Program or the News Partner
7 Program are not eligible for the Link Entitlement.

8 20. This application process notifies Apple that a developer is attempting to include an
9 External Purchase Link within its app, and allows Apple to confirm whether a developer is
10 adhering to the rules and requirements applicable to the Link Entitlement and to understand the
11 services and features the developer intends to offer through the Link Entitlement. Apple will
12 approve developers for the Link Entitlement if they satisfy the eligibility requirements outlined
13 here and in the StoreKit External Purchase Link Entitlement Addendum for US Apps.

14 21. The Link Entitlement includes requirements drawn from other entitlements Apple
15 has created, namely the StoreKit External Purchase Link Entitlement (NL) and the External Link
16 Account Entitlement. The StoreKit External Link Entitlement (NL) allows dating app developers
17 in the Netherlands App Store storefront to include links to external websites for purchasing digital
18 goods and services. The External Link Account Entitlement allows developers of reader apps to
19 include links in their apps to external websites for account creation or management.

20 22. These requirements serve a variety of purposes, but they all arise largely from the
21 fact that an External Purchase Link encourages users to leave the app and the App Store ecosystem,
22 and undertake a transaction on the open Internet. Apple has designed the App Store, iOS, and
23 iPadOS so that it can use established and predictable mechanisms to review apps for a variety of
24 purposes, including protecting user security and privacy, and deterring fraud and scams related to
25 the sale of digital goods and services. Apple lacks similar capabilities with respect to transactions
26 on the open Internet. Accordingly, the requirements of the Link Entitlement help to inform users
27 of the benefits they may be losing and the risks they are assuming when they leave the App Store
28

1 ecosystem, while still allowing developers to communicate with users regarding purchase
2 alternatives.

3 23. The Link Entitlement technical requirements are listed in the StoreKit External
4 Purchase Link Entitlement Addendum for US Apps and include the following:

5 **3.1** Your StoreKit External Purchase Link App (US) must continue to offer in-app
6 purchases in accordance with the Developer Agreement and the App Store Review Guidelines.
7 Your StoreKit External Purchase Link App (US), including any link You provide under this
8 Addendum, may not discourage end users from making in-app purchases.

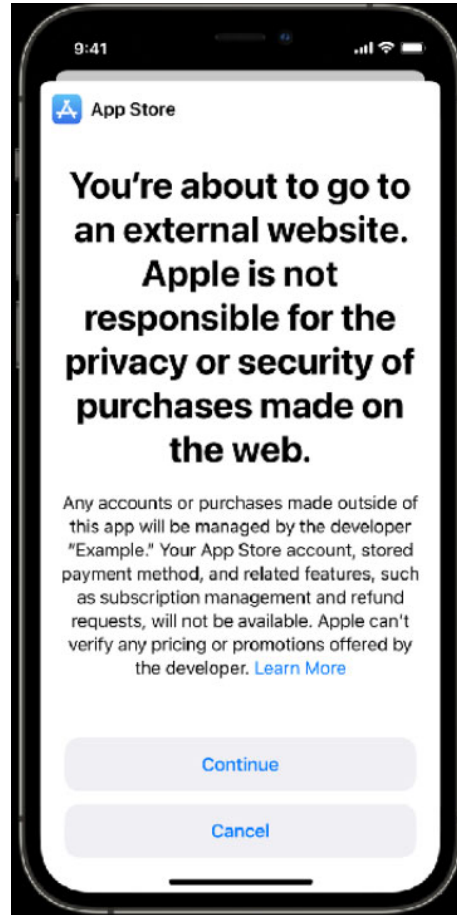
9 24. The requirement in **3.1** ensures that IAP remains available for in-app transactions
10 for digital goods and services. As the Link Entitlement makes clear, developers must continue to
11 offer IAP for such transactions.

12 **3.2** Prior to each instance of linking from Your StoreKit External Purchase Link App (US)
13 to an external website for purchases, You must:
14 • Call the canMakePayments API and determine that the end user may authorize
15 payments; and
16 • Call the StoreKit External Purchase Link API and determine that the end user is a
17 user of the United States App Store, and if so, surface to the end user the associated
18 system disclosure.

19 25. The requirements in **3.2** help ensure that users are adequately informed about
20 alternative purchase options, including through the “system disclosure” sheet described below.

21 26. The system disclosure sheet referred to explains to users that they are leaving the
22 app and going to an external website to make purchases through a source other than IAP. Apple
23 requires that users tap a button that says “Continue” before being redirected out of the app. The
24 purpose of this disclosure is to ensure users understand they are leaving the App Store ecosystem
25 and accepting the risks presented by an external website on the open Internet.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



27. The system disclosure sheet also advises users that certain App Store-specific features will not be available if they proceed. For example, once a user leaves the App Store ecosystem, Apple can no longer provide subscription management or process refund requests for digital goods and services.

3.3 The link You provide in Your StoreKit External Purchase Link App (US) under this Addendum must:

- Go directly to Your website without any redirect or intermediate links or landing page;
- Open a new window in the default browser on the device, and may not open a web view;
- Not pass additional parameters in the URL, to protect the end user (for example, their privacy);
- Be statically-defined in the <<SKExternalPurchaseLink>> in Your app's info.plist

1 before submission to the App Store;

- 2 • Be submitted with Your StoreKit External Purchase Link App (US) to the App Store, and shall be resubmitted if the URL changes;
- 3 • Be accompanied by language and a button adhering to the requirements provided in the Apple Materials;
- 4 • Not mimic Apple’s in-app purchase system, nor discourage end users from using it;
- 5 • Be displayed in Your StoreKit External Purchase Link App (US) on no more than one app page the end user navigates to (not an interstitial, modal, or pop-up), in a single, dedicated location on such page, and may not persist beyond that page;
- 6 • Not be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using in-app purchase; and
- 7 • Comply with any additional requirements provided in the Apple Materials.

8
9
10
11 28. The requirements in 3.3 are designed to minimize fraud, scams, and confusion. Developers must take responsibility for the linked website, send users only to that website, and inform Apple of that website so that Apple can review the app (including the External Purchase Link). These requirements also help ensure that users are not overloaded with duplicative information that may diminish the app experience, and are not confused about purchase options. They also protect Apple’s continued investment in its commerce and payment services, including the IAP option—which Apple will continue to require developers to use for in-app transactions for digital goods and services.

12
13
14
15
16
17
18
19 29. The “Apple Materials” referred to in 3.3 include several templates—with specified language and formatting—that developers may use for External Purchase Links, including: “For special offers go to [X]”; “Lower prices offered at [X]”; “To get [X%] off, go to [X]”; and “Buy for [\$X.XX] at [X].” Apple also specifies the style of the links on the developer support page for the Link Entitlement.

20
21
22
23
24 30. These templates and other requirements allow developers to communicate pricing information to users using standardized language to avoid misleading or confusing offers, and protect against false statements by developers. These templates also enable Apple to more efficiently review apps. These limitations apply only to External Purchase Links; Apple does not

1 limit the content of developers’ out-of-app communications to users, as detailed below.

2 **3.5** You may not include information about purchasing on Your website or a link to Your
3 website for purchasing on the product page of Your StoreKit External Purchase Link App (US).

4 31. The requirement in **3.5** limits the External Purchase Link to the app itself rather
5 than the product page (which appears on the App Store itself).

6 **3.6** Digital purchases sold on Your website to end users after link out that are marketed as
7 being for use in an Application must be available for use in that Application.

8 32. The requirement in **3.6** helps ensure that users are able to use the digital goods and
9 services that they purchase from the developer’s external website within an app.

10 33. Apple will charge developers a 27% commission on digital goods and services
11 transactions that take place on a developer’s website within seven days after a user taps through
12 an External Purchase Link from the system disclosure sheet to an external website.

13 34. Developers eligible for and participating in the App Store Small Business Program
14 will be charged a 12% commission on purchases made within seven days after a user taps on an
15 External Purchase Link and continues from the system disclosure sheet to an external website.
16 Auto-renewals in the second year or later of an auto-renewing subscription that was purchased
17 within seven days after a user taps through an External Purchase Link will be charged a 12%
18 commission.

19 35. All App Store developers—including those who choose to use the Link
20 Entitlement—benefit from (among other things) Apple’s platform integrity, proprietary tools and
21 technologies protected by intellectual property, developer services and support, services that help
22 developers acquire, retain, and reengage users, marketing and external advertising, and a safe
23 environment for users to download and purchase apps and in-app content. Apple monetizes its
24 significant investments in its ecosystem by charging a commission on specified transactions.

25 36. Apple will charge a commission on purchases made within seven days after a user
26 taps on an External Purchase Link and continues from the system disclosure sheet to an external
27

1 website. Many platforms charge a commission or other fee for similar transactions, with windows
2 ranging from 24 hours to 30 days, or even longer. The App Store affords many more tools to
3 developers than most platforms, and seven days also appropriately credits Apple for facilitating
4 linked transactions.

5 37. Apple will be monitoring the use of External Purchase Links and may modify the
6 requirements for the Link Entitlement if issues arise that are not adequately addressed in the current
7 guidance.

8 38. Developers that breach their obligation to timely pay Apple a commission on
9 specified transactions or otherwise violate the requirements of the Link Entitlement may lose
10 access to the Link Entitlement, may have their app(s) removed from the App Store, and/or may
11 have their developer account with Apple terminated, among other remedies and/or penalties.

12 39. More generally, 8.4 of the StoreKit External Purchase Link Entitlement Addendum
13 for US Apps informs developers that misleading practices, scams, or fraud will not be tolerated:

14 If Your StoreKit External Purchase Link App (US) engages in misleading, fraudulent,
15 improper, unlawful or dishonest acts or practices such as bait and switch, scams, or payment
16 fraud, it will be removed from the App Store and You may be removed from the Apple
Developer Program.

17 **PART (ii) – OUT-OF-APP COMMUNICATIONS**

18 40. Apple has complied with part (ii) of the injunction by revising Guideline 3.1.3 so
19 that it now reads, in relevant part:

20 Developers can send communications outside of the app to their user base about purchasing
21 methods other than in-app purchase.

22 41. Pursuant to this new Guideline, Apple does not limit developers' ability to send
23 out-of-app communications to users regarding alternative purchasing methods, regardless of how
24 developers obtain that contact information. Apple also does not limit the content of developers'
25 out-of-app communications to users.

26 42. Separately, Apple added Guideline 5.1.1(x), which provides:
27
28

1 Apps may request basic contact information (such as name and email address) so long as the
2 request is optional for the user, features and services are not conditional on providing the
3 information, and it complies with all other provisions of these guidelines, including imitations
4 on collecting information from kids.

4 43. This provision helps ensure that developers only collect information from users
5 with their full consent. Once they have done so, however, Apple does not limit the content of
6 out-of-app marketing materials or other communications developers may send to users.


7 **EXHIBITS**

8 44. Attached to this Declaration are copies of the amended Guidelines, the StoreKit
9 External Purchase Link Entitlement Addendum for US Apps, the developer support page regarding
10 the StoreKit External Purchase Link Entitlement (US), and the Entitlement Request Form.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2024

By: 
Matthew Fischer