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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Mary Katherine Arcell, Keith Dean Bradt, Jose Brito, Jan-Marie Brown, Rosemary D'Augusta, Brenda Davis, Pamela Faust, Carolyn Fjord, Donald C. Freeland, Donald Frye, Gabriel Garavanian, Harry Garavanian, Yvonne Jocelyn Gardner, Valarie Jolly, Michael Malaney, Lenard Marazzo, Lisa McCarthy, Timothy Nieboer, Deborah Pulfer, Bill Rubinsohn, Sondra Russell, Clyde Duane Stensrud, Gary Talewsky, Diana Lynn Ultican, Pamela Ward, and Christine M Whalen,

Plaintiffs,

vs.

Google LLC, Alphabet, Inc., XXVI Holdings, Inc., Apple, Inc., Tim Cook, Sundar Pichai, and Eric Schmidt,

Defendants.

Case No. 5:22-cv-02499-EJD

FIRST AMENDED COMPLAINT FOR VIOLATIONS OF SECTIONS 1 AND 2 OF THE SHERMAN ANTITRUST ACT (15 U.S.C. §§ 1 AND 2), VIOLATIONS OF THE CALIFORNIA CARTWRIGHT ACT (BUSINESS & PROFESSIONS CODE §§ 16700, ET SEQ.), VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW ("UCL") (BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.), VIOLATIONS OF THE CALIFORNIA UNFAIR PRACTICES ACT ("UPA") (BUSINESS & PROFESSIONS CODE §§ 17000 ET SEQ.)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This private antitrust action is brought under Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. 15, 26) for actual and potential damages and injunctive relief caused

by reason of and made necessary by the Defendants' past, present and substantially threatened continued violations of Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. 1, 2). This Court has subject matter jurisdiction under 28 U.S.C. Section 1331 in that the issue presented is a federal question. In addition, this Court has subject matter jurisdiction under 28 U.S.C. Section 1337 in that this civil action arises out of an Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

2. In addition, this case is brought pursuant to the California Cartwright Act for actual and potential damages and injunctive relief, restitution and disgorgement by reason of and made necessary by the Defendants' past, present and substantially threatened continued violations of Sections 16700, 16720, 16722, 16750, 16757, 16760(d), and 16761 of the California Business and Professions Code. The Court has supplemental subject matter jurisdiction of the pendent state law Cartwright Act claim under 28 U.S.C. § 1367.

3. This case is filed by Plaintiffs for injunctive relief, restitution and disgorgement by reason of the Defendants' past, present and substantially threatened continued violations of California's Unfair Competition Law ("UCL") pursuant to Sections 17200, 17201, 17203, 17204 and 17205 of the California Business and Professions Code and the Unfair Practices Act ("UPA"), Business and Professions Code, Sections 17,000 et seq. The Court has supplemental subject matter jurisdiction of the pendent California state claims under 28 U.S.C. § 1367.

4. The Court has personal jurisdiction over the Defendants because all Defendants are domiciled and are found within the United States, and venue is proper in this District under 15 U.S.C. § 22, and under 28 U.S.C. § 1391. Defendants transact business and are found within this District.

5. Defendants Google and Apple have engaged in, and their activities have substantially affected, the interstate and foreign trade and commerce of the United States.

Google and Apple provide a range of products and services that are intentionally marketed, distributed, sold, and offered to users of search throughout the fifty states and across state lines and in foreign countries. The restraints alleged in this Complaint affect, and are a burden on, the free and open trade between and among the States of the United States and the trade and commerce between and among the United States and foreign nations.

SUMMARY OF THE COMPLAINT

6. Apple is the largest company in the world with a value of $2.8 Trillion.

7. Alphabet (Google) is the seventh largest company in the world with a value of $1.8 Trillion.

8. The revenue in the general search market as of 2022 was $225,000,000,000 per year.

9. Google has a monopoly of 90% of the general search services market in the United States.

10. 60% of the search business is conducted over Apple devices.

11. Google considered the prospect of Apple entering the search business as a "Code-Red."

12. In response to the Code Red threat of Apple competing against Google in the search market, Google and Apple entered into an agreement that Apple would not compete against Google in the market.

13. The terms and conditions of the agreement are that Google will pay Apple billions of dollars per year and share the revenues of the search market with Apple.

14. In exchange for this privileged access to Apple's massive consumer base, Google pays Apple billions of dollars in advertising revenue each year, with estimates ranging between $8–12 billion.

15. The revenues Google shares with Apple make up approximately 15–20 percent of Apple's worldwide net income.

16. Apple in return has made Google the automatic default search engine on all of its devices.

17. This agreement covers roughly 36 percent of all general search queries in the United States, including mobile devices and computers. Google estimates that, in 2019, almost 50 percent of its search traffic originated on Apple devices.

18. Each of the terms and conditions of the agreement exclude competition and competitors from a substantial market.

19. Each of the terms and conditions violate the antitrust laws of the United States: the sharing of profits is illegal *per se* (*Citizen Publishing Co. vs. United States*, 394 U.S. 131 (1969), the division of markets is illegal *per se* (*Palmer v. BRG of Georgia, Inc*., 498 U.S. 46 (1990), and the maintenance of a monopoly through the use of exclusionary agreements is illegal (*United States v. Aluminum Co. of America*, 148 F.2d 416 (L. Hand 1945).

FACTS

20. The Defendants regularly met to confirm and re-confirm their agreements.

21. For example, in 2018, Apple's and Google's CEOs met to discuss how the companies could work together to drive search revenue growth. After the 2018 meeting, a senior Apple employee wrote to a Google counterpart: "Our vision is that we work as if we are one company."

22. The Apple and Google agreed that Apple would not compete in the search business in competition with Google.

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

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

25. For Google to be able to generate sufficient billions of dollars to pay to Apple, Apple agreed that Google would be the only search engine automatically included out-of-the-box in all of Apple's devices.

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

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

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

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

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

31. The meetings between the CEOs and Chairmen of Apple and Google were clandestine so that they could fraudulently conceal the agreement not to compete in the search business.

32. The Plaintiffs do not know the date when the agreement between Apple and Google was originally formed but allege that it began with Messrs. Jobs and Schmidt and that it has continued in force under Messrs. Cook and Pichai.

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

34. These meetings were undertaken to promote the shared vision that Apple and Google would act, in effect, as one company that had been "merged without merging". Apple and Google invented and used the word "co-opetitive" to describe their unlawful combination and conspiracy.

35. These CEOs and Chairmen knew and understood that their agreements were illegal under the antitrust laws of the United States. The CEOs and Chairmen had been advised that their agreement to divide the market would violate the antitrust laws.

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

37. The overall purpose of the Defendants' agreement was to eliminate the potential competition of Apple entering the search business.

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

a. secret meetings between the CEOs;

b. profit-pooling;

c. payment of billions of dollars every year by Google to Apple;

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

e. agreement that Apple would not compete;

f. the recognition and agreement that the more money that Google made the more money that Apple would make; and

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

39. Sixty percent (60%) of Google's search business was conducted through Apple devices.

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

41. Google viewed Apple as a potential competitor.

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

43. As a result, Google paid billions of dollars to Apple and agreed to share its profits with Apple in order to eliminate the threat and fear of Apple as a competitor.

44. Google, as of September 2020, controlled 94% of the U.S. mobile search engine market.

45. Google, as of September 2020, controlled 90% of the U.S. general search services market.

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

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

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

49. In addition to the potential and actual damages suffered by reason of the conspiracy, the Plaintiffs charge under Section 16 of the Clayton Act that all the illegal payments made by Google to Apple, all the illegal profit sharing, and all the payments by

Google to Apple made in furtherance of their agreement must be disgorged under principles of equity on the grounds that these wrongdoers must not be allowed or permitted to profit from their own wrongdoing. Plaintiffs request that the Court require Google and Apple to disgorge the payments made by Google to Apple in consideration of Apple's agreement not to compete against Google, in consideration of their agreement to pool or share profits, and in consideration of Apple's agreement to provide exclusive out-of-the-box access to Google on Apple's devices, which payments are being used to fund or promote the illegal conduct alleged. In addition, this Court must effect a forward-looking divestiture of the anticompetitive structures that Google and Apple have erected to commit their violations, for the benefit of the public as a whole, by dividing Google into separate and independent companies and dividing Apple into separate and independent companies to establish competition in search in the future.

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

51. In any one year, Google paid Apple more than $1 billion.

52. In any one year, Google paid Apple more than $3 billion.

53. In any one year, Google paid Apple more than $6 billion.

54. In any one year, Google paid Apple more than $9 billion.

55. In any one year, Google paid Apple more than $10 billion.

56. In any one year, Google paid Apple more than $12 billion.

57. From 2005 up to and including the time of the filing of this complaint, Google paid Apple more than $50 billion not to compete in the search business.

58. Google paid Apple to stay out of the search business.

59. Apple accepted the payments from Google and stayed out of the search business.

60. Apple promoted Google in the search business over other search providers and non-favored advertisers.

61. Apple and Google have the motive, the opportunity, by reason of their meetings, and the ability to control the search business, to share in its profits, and to eliminate the potential competition of Apple.

Plaintiffs

62. Each of the following Plaintiffs named below is an individual and a citizen of the state listed as the address for each such Plaintiff, and in the four years prior to the filing of this action, each Plaintiff was a user of search services on the internet:

Mary Katherine Arcell, New Orleans, LA
Keith Dean Bradt, Reno, NV
Jose Brito, Reno, NV
Jan-Marie Brown, Reno, NV
Rosemary D'Augusta, San Francisco, CA
Brenda Davis, Dallas, TX
Pamela Faust, Cincinnati, OH
Carolyn Fjord, Sacramento, CA
Donald C. Freeland, Cincinnati, OH
Donald Frye, Colorado Springs, CO
Gabriel Garavanian, Boston, MA
Harry Garavanian, Boston, MA
Yvonne Jocelyn Gardner, Colorado Springs, CO
Valarie Jolly, Dallas, TX
Michael Malaney, Grand Rapids, MI
Lenard Marazzo, Reno, NV
Lisa McCarthy, Naples, FL
Timothy Nieboer, Kalamazoo, MI
Deborah Pulfer, Sidney, OH
Bill Rubinsohn, Philadelphia, PA
Sondra Russell, Waco, TX
Clyde Duane Stensrud, Seattle, WA
Gary Talewsky, Boston, MA
Diana Lynn Ultican, Seattle, WA
Pamela Ward, Holmes Beach, FL
Christine M Whalen, New Orleans, LA

63. Because Plaintiffs are users of the services provided by internet search engines, and because they have used Google search on an almost daily basis, they have been harmed and continue to be threatened with harm and damage in that they have been deprived of the quality, service and privacy that they otherwise would have enjoyed but for Google's anticompetitive conduct. They have also been forced to withstand prejudicial steering by Google, as well as the annoying and damaging distortion of search results from Google in favor of Google's preferred advertisers. In addition, Plaintiffs have been damaged and continue to be threatened with damage because they have used Google search in their businesses and have, as a result, been forced to bear the added expense that results from distorted and steered search results. Further, Google has stunted innovation in new products that could serve as alternative search access points or disruptors to the traditional Google search model.

64. By restricting competition in general search services, Google's conduct has harmed users by reducing the quality of general search services (as related to privacy, data protection, and use of consumer data), by lessening choice in general search services, and by impeding innovation.

Defendants

65. Defendant Google, LLC is a limited liability company organized and existing under the laws of the State of Delaware. It is headquartered in Mountain View, California. Google is a subsidiary of Defendant XXVI Holdings Inc. (roman numerals signifying the number of letters in the alphabet), which is a subsidiary of Defendant Alphabet Inc. Defendant Alphabet Inc. is a publicly traded company that is incorporated and existing under the laws of the State of Delaware. Its principal executive offices are in Mountain View,

California. (Unless separately noted, Defendants Google, XXVI Holdings Inc. and Alphabet will hereinafter and above be collectively referred to as "Google".)

66. Defendant Apple, Inc. (hereinafter and above referred to as "Apple") is a corporation organized and existing under the laws of the State of Delaware. It is headquartered in Cupertino, California.

67. Defendant Tim Cook is the current CEO of Apple, Inc. Defendant Cook personally negotiated the contracts, combinations, and conspiracies alleged in this Complaint, and continuously confirmed, re-confirmed, and amended those agreements at secret meetings with his counterpart Defendant Pichai of Google. Defendant Cook's acts were authorized and ratified by Apple, and Defendant Cook was paid bonuses for the anticompetitive success of the agreements with Google. The board of directors of both Google and Apple knew of these agreements and understood their purpose, intent, and motive, and approved and ratified them.

68. Defendant Sundar Pichai is the current CEO of Defendant Alphabet Inc. and of Defendant Google LLC. Defendant Pichai personally negotiated the contracts, combinations, and conspiracies alleged in this Complaint, and continuously confirmed, re-confirmed, and amended those agreements at secret meetings with his counterpart Defendant Cook of Apple. Defendant Pichai's acts were authorized and ratified by Google, and Defendant Pichai was paid bonuses for the anticompetitive success of the agreements with Apple. The board of directors of both companies knew of these agreements and understood their purpose, intent, and motive, and approved and ratified them.

69. Defendant Eric Schmidt is the former CEO and Chairman of Google. Defendant Schmidt personally negotiated the contracts, combinations, and conspiracies alleged in this Complaint, and continuously confirmed, re-confirmed, and amended those agreements at secret meetings with his counterparts Steve Jobs and Defendant Cook of Apple. Defendant Schmidt's acts were authorized and ratified by Google, and Defendant Schmidt was

paid bonuses for the anticompetitive success of the agreements with Apple. Defendant Schmidt served on the Board of Directors of both Google and Apple. The board of directors of both companies knew of these agreements and understood their purpose, intent, and motive, and approved of and ratified them.

70. Various persons, partnerships, firms, and corporations not named as Defendants in this lawsuit, and individuals, the identities of which are presently unknown, have participated as co-conspirators with Defendants in the offenses alleged in this Complaint, and have performed acts and made statements in furtherance of the illegal contracts, combinations, and conspiracies.

71. Apple and Google have achieved their size by multiple acquisitions of competitors and potential competitors, all of which have violated Section 7 of the Clayton Antitrust Act (15 U.S.C. §18).

72. Since 2000, Apple has acquired more than 120 competitors, potential competitors, or "product-extension merger" companies for billions of dollars. *FTC vs. Procter & Gamble Co.*, 386 U.S. 568 (1967).

73. Since 2000, Google has acquired more than 247 competitors, potential competitors, or "product-extension merger" companies for billions of dollars.

74. Apple and Google are two of the largest companies in the world.

75. Apple and Google have abused their size by agreeing not to compete, by their profit sharing, by their agreement for preferential treatment in their default search settings that automatically exclude competitors, by their exclusion of non-favored Google advertisers and by their suppression of actual and potential search providers.

76. Apple and Google have abused their size by engaging in anticompetitive conduct, some of which has resulted in fines in the billions of dollars.

77. Although "Mere size * * * is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly * * * size carries with it the opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past." *United States v. Swift*, 286 U.S. 106 (1932). Also see *United States v. Aluminum Co. of American*, 148 F.2d 416, at 430 (2d Cir 1945), Opinion of Judge Learned Hand sitting by certification for the Supreme Court and *United States v. Paramount Pictures*, 334 U.S. 141, 174 (1948).

78. Both Apple and Google have abused and have utilized their size in the past for unlawful purposes, using unlawful means to achieve unlawful objectives.

79. Both Apple and Google have abused their size by engaging in unlawful acquisitions under Section 7 of the Clayton Antitrust Act and have been found to have engaged in anticompetitive conduct. Indeed, Google has been fined billions of dollars for having abused its size by engaging in anticompetitive conduct.

80. The current CEO of Defendant Alphabet Inc. is Sundar Pichai, who is also the CEO of Google LLC. The current CEO of Defendant Apple Inc. is Tim Cook.

81. Defendant Google is one of the wealthiest companies in the world, with a market value of over $1 trillion and annual revenue exceeding $180 billion.

82. As of November 30, 2021, Google shareholder equity is $244.57 billion, and its market cap is $1.892 trillion.

83. Google's revenue for 2021 through September is $239.21 billion and its net income is $70.62 billion.

84. Google's CEO Sundar Pichai was awarded a $242 million pay package after taking control of Alphabet in 2019. Pichai has earned nearly $1 billion in stock grants over the last five years.

85. Google has achieved pre-eminent power in search. When asked to name Google's biggest strength in search, Google's former CEO explained: "Scale is the key. We just have so much scale in terms of the data we can bring to bear." By using profit sharing agreements to lock up scale for itself and denying it to others, Google has unlawfully built and maintains its search monopoly - so long as Apple abides by its agreement not to compete against Google.

86. Apple is an American technology company that specializes in consumer electronics, software and online services.

87. Apple was founded in 1976 and is now the largest information technology company by revenue in the United States, totaling $274.5 billion in 2020.

88. Since January 2021, Apple has been the world's most valuable company. As of November 30, 2021, Apple shareholder equity is $63.09 billion, and its market cap is $2.712 trillion.

89. Apple's revenue so far in 2021 through September is $365.82 billion and its net income is $94.68 billion.

90. In 2020, Apple CEO Tim Cook was paid a $14.8 million salary and had $281 million worth of stock options that vested; in 2021 Cook was given 5 million Apple shares worth about $750 million.

91. Apple devices account for roughly 60 percent of mobile device usage in the United States.

92. Apple's Mac OS (operating system) accounts for approximately 25 percent of total computer usage in the United States.

93. Apple and Google are currently worth more than $4.5 trillion combined.

94. Apple and Google believe and act as though they are one company. They have admitted that "Our vision is that we work as if we are one company"; that "you can actually merge without merging"; and that "If we just sort of merged the two companies, we could just call them AppleGoo". Apple's general counsel described the reality of their combination as "co-opetition."

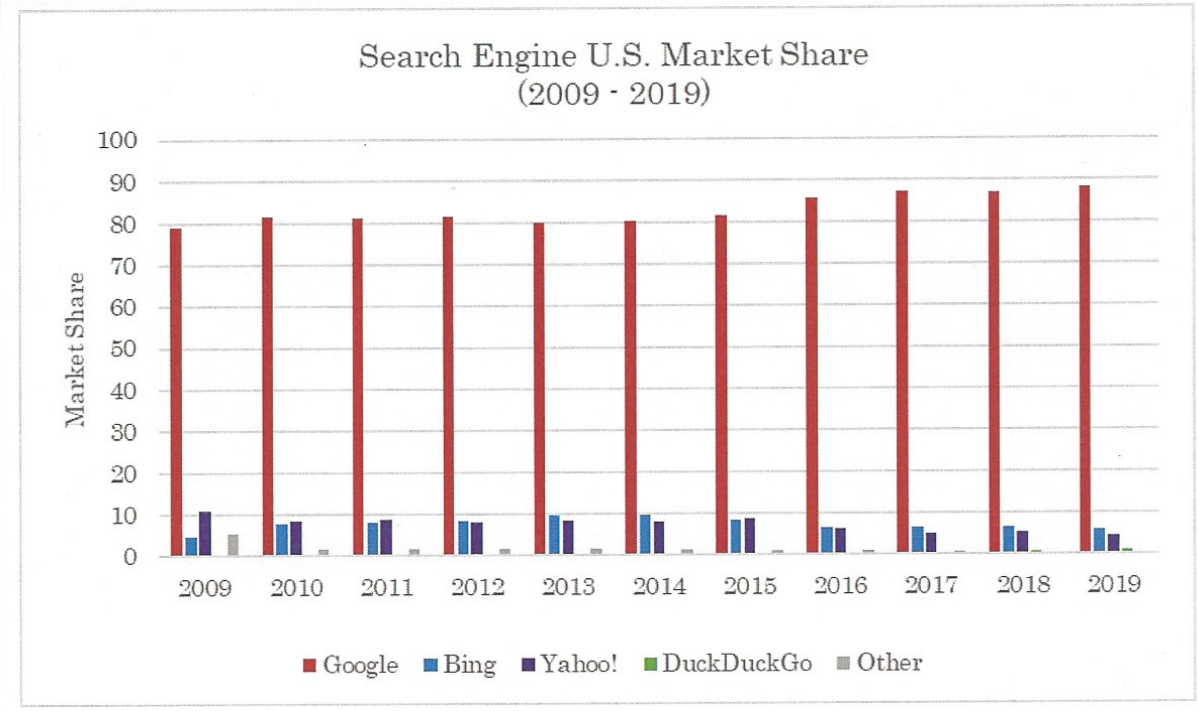
95. Google's primary source of income is advertising revenue generated from its Google search engine.

96. Google uses consumer search and consumer information to sell advertising.

97. When a consumer uses Google, the user provides personal information and attention to the delivered searched page in exchange for search results. Google monetizes the user's information and attention by selling ads.

98. Judge Mehta, in denying summary judgment for Google, stated in his opinion that as of September 2020, Google controlled 90% percent of the U.S. general search services market and an even higher percent of the mobile search engine U.S. market share.

99. Google's next closest competitor in 2020 commanded less than 2% of the mobile search market. All the competitors, Yahoo!, Bing, DuckDuckGo, and others have less than 7% of the market compared to Google's almost 94%.



100. In the United States, advertisers pay about $40 billion annually to place ads on Google's search engine results page (SERP).

101. Scale is of critical importance to competition among general search engines for users and search advertisers. Google has long recognized that its competitors will not be able to compete without adequate scale. The agreement between Apple and Google suppresses the ability of Google's competitors to achieve any scale of significance to be able to compete against Google. That economic prohibition would be eliminated if the agreement between Apple and Google were dissolved.

102. The most effective way for Google to achieve scale is for its general search engine to be the preset search engine on mobile devices, computers, and other devices; and to agree with Apple not to compete.

103. In 2005, Apple began using Google as the automatic, preset, out-of-the-box general search engine for Apple's Safari browser.

104. In return, Google began to pay Apple a significant percentage of Google's yearly general search advertising revenue in the profit-sharing agreement.

105. In 2007, Google extended this profit-sharing agreement to cover Apple's iPhones.

106. In 2016, the agreement expanded further to include additional search access points — Siri (Apple's voice-activated assistant) and Spotlight (Apple's system-wide search feature) — making Google the automatic, preset, general search engine for all of Apple's devices.

107. Currently, Google's profit-sharing agreements with Apple give Google an exclusive, preset position on all significant search access points on Apple computers and mobile devices.

108. In exchange, since 2005, Google has agreed to share billions of dollars of advertising revenue with Apple each year in consideration for Apple's commitment not to compete in the search market.

109. Since 2005, Google has become the primary, out-of-the-box exclusive search engine on Apple's Safari browser on its Mac computer, and, since 2007, on Apple's iPhone.

110. Apple has been paid for the profits it would have made if it had competed with Google without having the expense of doing so.

111. By reason of the profit-sharing and the discriminatory treatment in favor of Google on its devices, Apple has contributed to Google's dominant position in the search market because the more money Google makes in search, the more money Apple makes under the agreements.

112. The non-compete agreement, the profit-sharing agreement, and the out-of-the-box preference agreement remove any incentive on the part of Apple to compete against Google in the search business.

113. Google's CEO, Eric Schmidt, served on Apple's board of directors until 2009. In 2007 while serving as both an Apple Director and as Google CEO he stood onstage at the formal unveiling of the Apple iPhone with Steve Jobs, the founder of Apple, and admitted that, with Google search on the iPhone, "you can actually merge without merging" and "If we just sort of merged the two companies, we could just call them AppleGoo."

114. Apple told Google: "Our vision is that we work as if we are one company."

115. In 2008, Jobs met at Google's headquarters near Palo Alto with Larry Page and Sergei Brin, the two founders of Google, and with Andy Rubin, the head of Android development for Google, to discuss Google's recent purchase of the Android operating system. Brin and Page considered Jobs a mentor.

116. Jobs agreed to continue to give Google access to the exclusive, out-of-the-box search position on the iPhone, as long as there were "good relations" between the two companies. According to Jobs: "I said we would, if we had good relations, guarantee Google access to the iPhone and guarantee it one or two icons on the home screen."

117. Jobs continued to meet with Google executives until his death in October 2011. In mid 2010, he met with Eric Schmidt who was then still CEO of Google, at a café at the Stanford Shopping Center. In mid 2011 he met again with Larry Page in Job's living room.

118. At each of these meetings these top executives solidified their agreement that they would cooperate rather than compete against each other.

119. On information and belief, Google has paid Apple between $8 and 15 billion a year – an amount which is pure profit to Apple.

110. Google makes approximately $25 billion a year in ad revenue from its searches on Apple's devices, iPhones, iPads, and Macs.

111. Google estimates that, in 2019, almost 50 percent of its search traffic originated on Apple devices.

112. In the past, Apple had actively worked on developing its own general search engine as a potential competitor to Google. As a result, Apple is seen by Google as a potential competitor that potentially threatens Google's dominance in internet search.

113. Apple could make it difficult for its iPhone users to get to Google – and Google knew it.

114. It has been estimated that if Apple were to launch its own search engine in competition with Google, at least $15 billion a year of Google revenue would go to Apple. This is equal to the estimated Google payment to Apple in 2021.

115. But Apple has agreed with Google that it will neither develop nor offer a general search engine in competition with Google.

116. Google has locked in Apple's agreement not to compete by paying Apple billions of dollars from the revenues it derives from advertisers each year.

117. The profits Google shares with Apple make up approximately 15 - 20 percent of Apple's worldwide net income.

118. By paying billions of dollars to Apple each year, Google has locked in Apple's commitment not to compete with Google in search.

119. By paying Apple billions of dollars each year to preserve its position as the initial, out-of-the-box exclusive search provider on Apple devices, Google and Apple have shared monopoly control and have shared the power to set prices and exclude competition in search.

120. Users will rarely change the search provider on their devices after the devices have been purchased.

121. By eliminating potential competition from Apple, and by becoming Apple's exclusive search engine, Google can charge higher fees for search advertising and can steer users to its own proprietary apps.

122. Google's own documents admit that Apple's "Safari default is a significant revenue channel" and that losing that exclusivity with Apple would substantially harm Google's bottom line.

123. Google viewed the prospect of Apple's competition in the search business as a "Code Red" emergency.

124. One of the meetings between the CEOs of Google and Apple took place at a dinner on March 10, 2017, between Sundar Pichai, CEO of Google and its parent Alphabet, Inc., and Tim Cook, CEO of Apple, during which they discussed their agreements and the search business.

125. Tim Cook had actively promoted the profit-sharing arrangement from the very beginning in exchange for Apple's commitment not to compete in the search business. Cook knew, as Google observed in a 2018 strategy document, that "People are much less likely to change [the] default search engine on mobile."

126. Google's deal with Apple "prevents the pre-installation of other search engines or browsers," thus enabling Google "to protect Search exclusivity on the device as it makes its way to the user."

127. After the meeting, Apple announced that Google would be the search vehicle for Siri, and Google announced that it had increased its payments in its sharing agreements for search traffic.

128. The photo above was taken by a bystander who discovered a clandestine meeting between Tim Cook of Apple and Sundar Pichai of Google. As can be seen from the photograph, the dinner was over and Mr. Pichai's left arm rested on a manila folder with documents.

129. The photo above was taken by a bystander from outside the restaurant where the CEOs of Google and Apple were at dinner.

130. The profit-sharing agreements between Apple and Google have in fact resulted in Apple pushing more search traffic to Google and denying traffic to Google's competitors.

131. It was reported that as late as 2014 Apple had been working on its own search engine. However, Apple opted to receive the payment of billions of dollars from Google instead of competing.

132. Google's annual payments to Apple – estimated to be $8 billion to $12 billion a year – up from $1 billion a year in 2014, account for 15 to 20 percent of Apple's annual profits.

133. In 2018, Apple's CEO Tim Cook and Google's CEO Sundar Pichai met again to discuss how Apple could further drive search advertising revenue to Google and increase the amount of Apple's share of the profit-sharing agreement.

134. In 1952 the Ninth Circuit in *CO-Two Fire Equipment Co. v. United States*, 197 F. 2d 489, established the so-called plus factors in conspiracy cases. The court found that, in evaluating the existence of a conspiracy, a meeting with a competitor constitutes a plus factor that will support a criminal conviction for conspiracy even though the defendant in an affidavit testified in that case that the meetings were innocuous.

135. The Google-Apple agreement not to compete and to share in the profits substantially forecloses Google's search competitors from a substantial market.

136. In 2019, almost 50 percent of Google's search traffic originated on Apple devices.

137. By agreeing with Apple to pay Apple a substantial portion of the inflated income extracted from its advertisers, Google has locked in Apple's agreement not to compete for search advertising, and by sharing it profits from search revenues from search advertisers with Apple, it has incentivized and ensured that Apple will faithfully maintain its agreement not to compete in the search advertising market.

138. Apple and Google have abused their size by engaging in anticompetitive conduct, some of which has resulted in fines in the billions of dollars.

139. Apple has been found to have engaged in a *per se* illegal conspiracy with book publishers to fix the price of ebooks. *United States v. Apple, Inc.,* 791 F.3d 290 (2d Cir 2015).

140. The United States has alleged that Google has engaged in monopolizing the AdTech Market involving AdTech tools (software) that link publishers and advertisers. In this regard it has purchased Double Click, ADMob, Invite Media, and Ad Meld in order to

manipulate advertising auctions. *United States v. Google, LLC*, Case 1:23-cv-00108, USDC, ED Virginia.

141. Although "Mere size * * * is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly * * * size carries with it the opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past." *United States v. Swift*, 286 U.S. 106 (1932). Also see *United States v. Aluminum Co. of American*, 148 F.2d 416, at 430 (2d Cir 1945), Judge Learned Hand by virtue of the certificate of the Supreme Court, acting under the authority of the Supreme Court; *United States v. Paramount Pictures*, 334 U.S. 141, 174 (1948).

142. Both Apple and Google have abused their size and have utilized their size in the past for unlawful purposes, using unlawful means to achieve unlawful objectives.

143. Both Apple and Google have abused their size by engaging in unlawful acquisitions under Section 7 of the Clayton Antitrust Act and have been found to have engaged in anticompetitive conduct.

144. Indeed, Google has been fined billions of dollars for having abused its size by engaging in anticompetitive conduct.

145. The European Commission has recently fined Google 2.42 billion Euro for breaching EU antitrust proscriptions by abusing its market dominance in search to provide an illegal advantage to other Google products, including its comparison-shopping service.

146. In *United States v. Google,* 20-cv-3010, (D. D.C. Aug.4, 2023), Judge Mehta issued his Memorandum Opinion in which the court denied Google's motion for summary judgment as to the United States' claim that "Google has unlawfully maintained its monopoly power through a set of exclusive contracts…that make Google the default search engine on a range of [Apple] products in exchange for a share of the advertising revenue generated by searches run on Google… So, for example, when a purchaser buys a new iPad, Google will be

the out-of-the-box default search engine on Apple's Safari web browser . . . . [T]he court denies summary judgment as to the claim that Google's alleged exclusive dealing arrangements violate Section 2 of the Sherman Act."

147. Judge Mehta further stated: "The Browser Agreements do lock in Google as the default search engine for years at a time. In the case of Apple products, that means Google is a purchaser's out-of-the-box search engine. That is arguably a form of exclusivity—rivals are prevented from occupying default position in the browser's integrated search bar at time of purchase. *Cf. Microsoft* , 253. F.3d at 68." (Opinion at p. 34)

148. Plaintiffs charge that the Defendants, Google and Apple, have agreed to divide the markets for both search and search advertising. In particular, Plaintiffs charge that Apple has agreed not to enter the general search market and not to engage in search advertising in exchange for the payment by Google to Apple of billions of dollars in profits that are being generated by Google in its search advertising business. Apple does nothing for these billions except permit Google to be the default search engine on its computers, iPhones and mobile devices – and, of course, agree with Google not to enter the search market and not to compete with Google for search advertising.

149. In *Citizen Publishing Co. vs. United States*, 394 U.S. 131 (1969) two newspapers, the Star and the Citizen entered into a joint operating agreement in a jointly held company, in which rates were set and there was profit pooling and a non-competition provision. The U.S. Supreme Court affirmed the district court's grant of summary judgment on the ground that the agreement to share profits and not to compete was a *per se* violation of Section 1 of the Sherman Act.

150. In *Palmer v. BRG of Georgia, Inc*., 498 U.S. 46 (1990), competitors were providers of bar review courses who entered into a revenue-sharing agreement outside of Florida. The Supreme Court reversed the grant of summary judgment to defendants and held

that horizontal market allocation agreements are *per se* violations of Section 1 of the Sherman Act and are "anticompetitive regardless of whether the parties split a market within which they both do business or whether they merely reserve one market for one and another for the other.

151. The Supreme Court opinions demonstrate clearly and succinctly how the Defendants' conduct, as alleged by Plaintiffs in this case, is a violation of law.

152. Plaintiffs have alleged a horizontal market allocation agreement between Apple and Google that Apple will not compete against Google and that Google will pay Apple not to compete.

153. The agreement between Apple and Google to share revenue and profits reduces Apple's incentive to compete with Google. The quid pro quo for the agreement is that Google must pay Apple billions of dollars to stay out of the market and Apple must discriminate in favor of Google's search engine thereby foreclosing all other potential competitors. Indeed, the more money that Google makes by monopolizing search and search advertising, the more money Apple makes.

154. The extent of the payments being made to Apple to ensure that it has no incentive to compete with Google is presently unknown but estimated to be between $8–12 billion per year. Thus far, Plaintiffs have been prevented from obtaining the written Google-Apple agreements which set out the combination and conspiracy in detail and has been prevented from inquiring into the agreements between Google and Apple as both written discovery and even limited deposition discovery have been stayed by the Court.

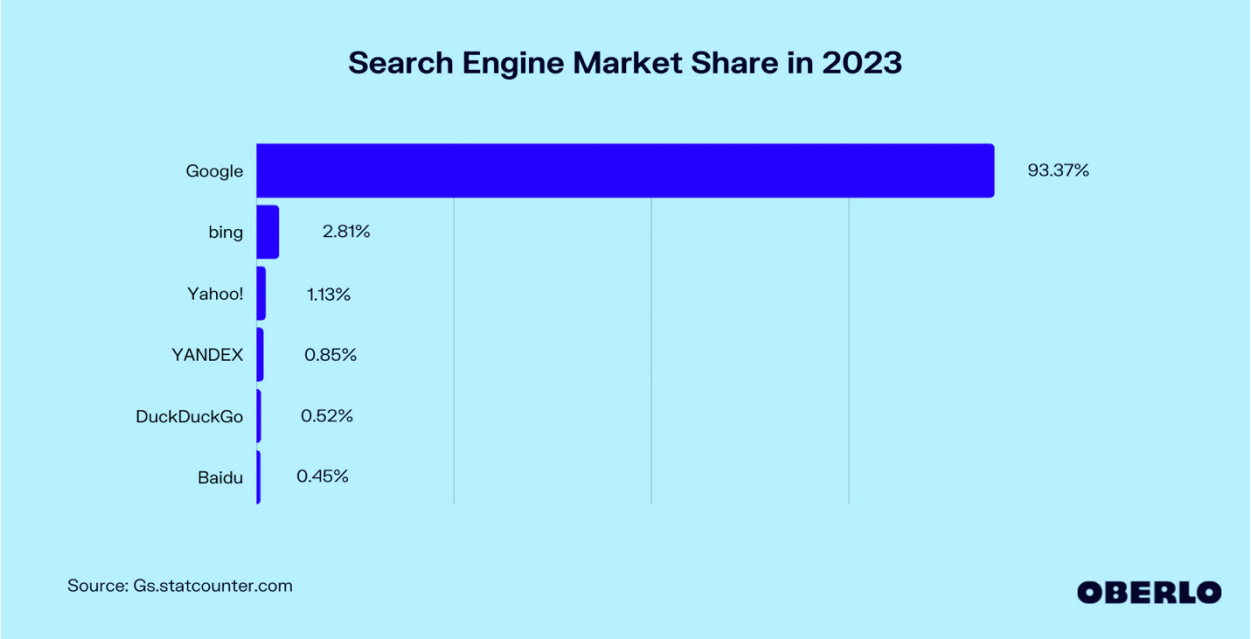
155. Plaintiffs have been prevented from inquiring into the nature of the secret meetings between Defendants. Plaintiffs have requested the amount of the payments made and the details of the meetings which occurred on a regular basis for the purpose of negotiating and renegotiating the amount of compensation and the other myriad and necessary details for the execution of their revenue sharing and profit sharing deals.

156. The Defendants Apple and Google have agreed in various writings, including, by inference, in their written Revenue Sharing Agreement and in their written Pre-Installation Agreement, that Apple would not compete in the internet search business and in the search advertising business in competition with Google.

157. The Defendants have also orally agreed that Apple would not compete in the general search services business and the search advertising business in competition with Google.

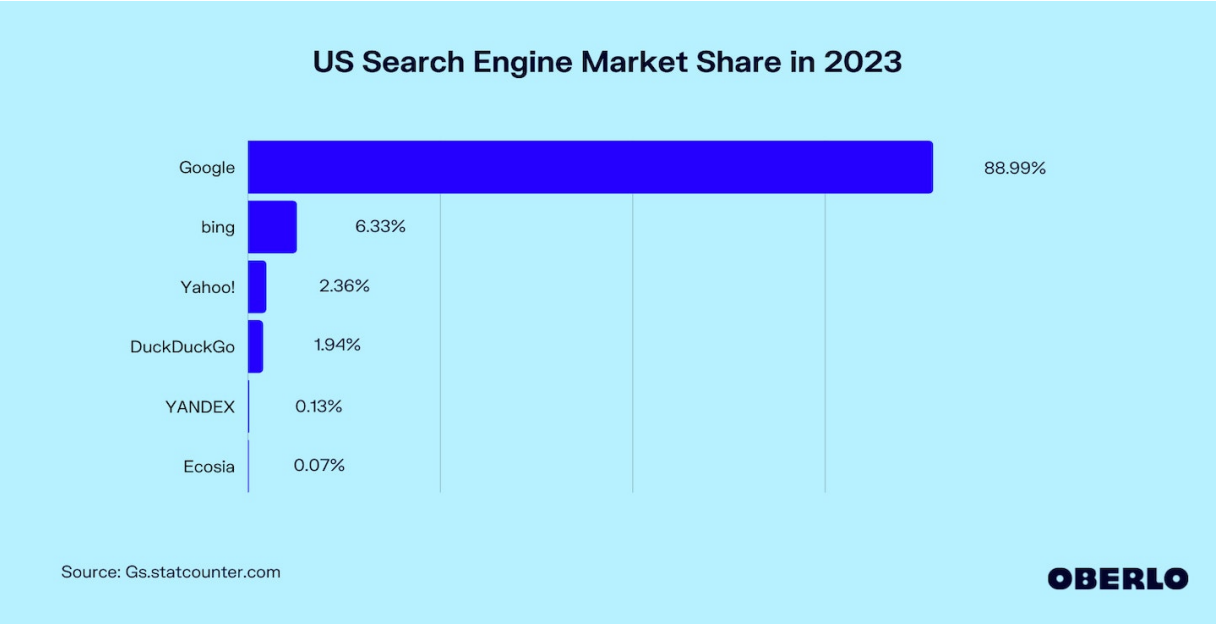
158. As a direct result, Google has dominated the general search engine market and the search advertising market both globally and in the United States. See charts following:

GLOBAL SEARCH ENGINE MARKET SHARE 2023



From https://www.oberlo.com/statistics/search-engine-market-share

U.S. SEARCH ENGINE MARKET SHARE 2023



From https://www.oberlo.com/statistics/search-engine-market-share#:~:text=US%20search%20engine%20market%20share,%2C%20compared%20to%2093.37%25%20worldwide.

159. Google's dominance in the U.S. search engine market is even more impressive when it comes to search queries on mobile phones, with 95.12% of all mobile search queries handled by Google.[1]

160. In 2021, Google accounted for an estimated 28.6 percent of the total digital advertising revenue generated in the United States and was the largest digital ad publisher in the country.[2]

161. Apple has agreed to assist Google in building its search business and its search advertising business because Apple will by agreement share in Google's monopoly profits.

[1] https://www.oberlo.com/statistics/search-engine-market-share#:~:text=US%20search%20engine%20market%20share,%2C%20compared%20to%2093.37%25%20worldwide.

[2] https://www.statista.com/statistics/242549/digital-ad-market-share-of-major-ad-selling-companies-in-the-us-by-revenue/

General Search Services in the United States Is a Relevant Product and Geographic Antitrust Market

162. General search services in the United States is a relevant antitrust market. General search services allow consumers to find responsive information on the internet by entering keyword queries in a search engine such as Google, Bing, or DuckDuckGo.

163. General search services are unique because they offer consumers the convenience of access to an extremely large volume of information across the internet. Consumers use general search services to find specific websites, to find answers to questions, and even to make purchases.

164. Other search tools and sources of information are not reasonable substitutes for general search services. Books, publisher websites, social media platforms, and even specialized search providers such as Amazon, Expedia, or Yelp, do not offer consumers the scope of information or convenience that is provided by a general search engine. These other resources do not respond to all types of consumer queries. Few consumers would find alternative sources a suitable substitute for general search services. As a result, there are no reasonable substitutes for general search services, and a general search service monopolist would be able to maintain quality below the level that would prevail in a competitive market.

165. The United States is a relevant geographic market for general search services. Google's services are optimized based on the user's location in the United States. General search services available in other countries are not reasonable substitutes for general search services offered in the United States. Google analyzes search market shares by country, including the United States. Therefore, the United States is a relevant geographic market.

Anticompetitive Effects of the Google and Apple Combination and Conspiracy to Monopolize the General Search Services Market

166. Google and Apple have maintained unlawful monopolies in the general search services market through their exclusionary agreements and by other conduct that have separately and collectively harmed competition by:

a. Substantially foreclosing competition in general search services and insulating search queries in the United States against any meaningful competition;

b. Agreeing not to compete with one another in general search services and for search advertising.

167. By restricting competition in general search services, Google's and Apple's conduct has harmed consumers of search services by reducing the quality of general search, lessening choice in general search services, and impeding innovation.

168. Google's and Apple's exclusionary conduct has also substantially foreclosed competition in the search advertising market and has harmed advertisers. By suppressing competition in order to be able to charge advertisers more than it could in a competitive market, Google can also reduce the quality of the services it provides to advertisers.

169. Google's and Apple's conduct has also harmed competition by impeding the distribution of innovative search apps that offer search features that would otherwise challenge Google. Google and Apple have also harmed competition by raising rivals' costs and foreclosing them from effective distribution channels, preventing them from meaningfully challenging Google's monopoly in general search services and in search advertising.

170. Absent Google's and Apple's exclusionary agreements and other conduct, dynamic competition for general search services would lead to higher quality search, increased consumer choice, and a more beneficial user experience. In addition, more competitive search advertising markets would allow advertisers to purchase ads at more attractive rates, with

better quality and service. Finally, the incentives and abilities for companies to develop and distribute innovative search products would be restored, resulting in more options, better products, and greater consumer welfare overall.

171. The anticompetitive effects flowing from Google's and Apple's agreements, particularly when considered collectively, have allowed Google to develop and maintain monopolies in the markets for general search services and search advertising. These anticompetitive effects outweigh any benefits from those agreements.

STANDING

172. Plaintiffs have standing to bring this action under Sections 1 and 2 of the Sherman Act. Plaintiffs are consumers who use the Google search engine. Because of Google's monopoly power and because of the illegal written and oral agreements with Apple to stay out of the general search services market, there are fewer viable, less expensive competitive alternatives available to Plaintiffs to conduct search inquiries and thereby to obtain the information required both in their daily lives and to operate their businesses.

173. The relevant market in this case is the market for general internet search. The market in which Plaintiffs participate directly is the general internet search market. Plaintiffs operate their businesses using the search services that Google and Apple and their conspiracy restrict.

174. Google in turn makes its money from adds placed on its search engine. Google's dominance in the search market gives it the power to control the price of search advertising that it will charge to advertisers seeking the eyes of the searchers, since these markets work as hand in glove. The revenue Google generates in its business comes from the advertising to which searchers are exposed while engaging in their search.

175. The Plaintiffs' injury is both particularized and concrete. Plaintiffs have been injured by reason of Google's extraction of data from the users of its internet search engine

such as Plaintiffs and by Google's monetization of the Plaintiffs' personal data that it resells to others. The monetization of Plaintiffs' data establishes its value and the extraction of this data from users results in a direct injury.

176. Plaintiffs and consumers are directly injured because they have been deprived of alternative search engines that may be more responsive to Plaintiffs' demands for privacy and because Plaintiffs have been subjected to an inferior search experience. Plaintiffs are injured because Plaintiffs and consumers must relinquish their personal information to Google during their search. Google's service is not free; Plaintiffs and consumers pay for the Google search by trading personal data for the search results and by making themselves subject to targeted advertising that will follow them wherever they travel on the internet through Google.

177. Google has threatened and has caused direct and concrete injury to Plaintiffs. Google induces users to use its search engine and when users use Google's search engine, Google extracts the user's valuable, particularized search data for no compensation to the user. Google then concretely monetizes the user's search data by selling it to advertisers and others for billions of dollars in revenue. Plaintiffs and other users of Google's search engine are injured by the taking of their valuable search data for no compensation and by the subsequent bombardment of their emails with advertising by advertisers who purchased the user's data from Google for no compensation. If it were not for Google's monopoly, and if there were more competition for consumer searches, Google would be forced to pay the consumer for the information it collects and for its monetization of that consumer's information. Ultimately, Plaintiffs and all consumers are directly injured in their business or property because Google does not pay them for the information that it collects. Plaintiffs are owed compensation for the valuable personal information that is secretly extracted from them and resold.

FEDERAL VIOLATIONS ALLEGED

First Claim for Relief
An Agreement Not to Compete in the Search Business
(Defendants Google and Apple)

178. Plaintiffs incorporate the allegations of paragraphs 1 through 177 above and 192 - 268 below.

179. Defendants Google and Apple made an agreement that Apple would not compete with Google in the search business. In exchange for that agreement, Google paid Apple billions of dollars; the Google and Apple engaged in profit-pooling of the advertising revenues from Google's search business; and Google was granted an exclusive default position on Apple's platforms to increase the revenues that would be shared with Apple.

180. The reasonable inference that Defendants' have agreed not to compete is support by the following plus factors:

a. Google has monopolized the general search services market in the United States.

b. The Defendants' CEOs met privately and secretly to discuss and confirm this agreement and personally understood that that their agreement was a violation of the antitrust laws.

c. Apple has been found in the past to have engaged in a conspiracy with book publishers to fix the price of ebooks. *United States v. Apple, Inc.,* 791 F.3d 290 (2d Cir 2015).

d. Apple and Google have abused their size by engaging in anticompetitive conduct, some of which has resulted in fines in the billions of dollars.

e. Apple has been found to have engaged in a per se conspiracy with book publishers to fix the price of ebooks. *United States v. Apple, Inc.,* 791 F.3d 290 (2d Cir 2015).

f. The United States has alleged that Google has engaged in monopolizing the AdTech Market involving AdTech tools (software) that link publishers and advertisers. In this regard it has purchased Double Click, ADMob, Invite Media, and Ad Meld in order to manipulate advertising auctions. *United States v. Google, LLC*, Case 1:23-cv-00108, USDC, ED Virginia.

g. Both Apple and Google have abused their size and have utilized their size in the past for unlawful purposes, using unlawful means to achieve unlawful objectives and have been found to have engaged in anticompetitive conduct. Although "Mere size * * * is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly * * * size carries with it the opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past." *United States v. Swift*, 286 U.S. 106 (1932).

h. Google has been fined billions of dollars for having abused its size by engaging in anticompetitive conduct. The European Commission has recently fined Google 2.42 billion Euro for breaching EU antitrust proscriptions by abusing its market dominance in search to provide an illegal advantage to other Google products, including its comparison-shopping service.

i. In *United States v. Google,* 20-cv-3010, (D. D.C. Aug.4, 2023), Judge Mehta in the District of Columbia District Court issued a Memorandum Opinion in which the court denied Google's motion for summary judgment. The United States had claimed that "Google has unlawfully maintained its monopoly power through a set of exclusive contracts…that make Google the default search engine on a range of [Apple] products in exchange for a share of the advertising revenue generated by searches run on Google… So, for example, when a purchaser buys a new iPad, Google will be the out-of-the-box default search engine on Apple's Safari web browser…Occupying the default search engine position on [Apple]

products, Plaintiffs contend, is exclusionary conduct that unlawfully prevents Google's rivals from effectively competing in the relevant markets. . . .[T]he court denies summary judgment as to the claim that Google's alleged exclusive dealing arrangements violate Section 2 of the Sherman Act."

j. Judge Mehta further stated: "The Browser Agreements do lock in Google as the default search engine for years at a time. In the case of Apple products, that means Google is a purchaser's out-of-the -box search engine. That is arguably a form of exclusivity—rivals are prevented from occupying default position in the browser's integrated search bar at time of purchase."

181. The effect of Defendants' agreements is to suppress competition from other smaller search competitors such as Bing, Yahoo!, and DuckDuckGo.

182. Because of Google's and Apple's agreements not to compete and to divide the market, prices have been higher, production has been lower, innovation has been suppressed, quality has been less, and user choice has been eliminated.

183. On the other hand, in the absence of the anti-competitive agreements, and if Apple were to compete against Google in search as it previously intended to do, advertising expenses would be lower, the incentives for companies to develop and distribute innovative search products would be restored, the quality of search would be higher, and user choice would be preserved and enhanced.

184. Google's and Apple's agreement not to compete for search advertising is a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

185. Google's and Apple's agreement to share profits is a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

186. Google and Apple's agreement to grant preferential treatment to Google in their default search settings that automatically exclude competitors on all Apple devices

excludes and forecloses competitors from a substantial market and increases prices to advertisers and is therefore a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

187. Google's and Apple's anticompetitive agreements have stunted innovation in new products that could serve as alternative search access points or disruptors to the traditional Google search model that would benefit the search users/consumers such as Plaintiffs, just as the break-up of ATT launched a renaissance in communications technology.

188. Apple has voluntarily participated in and profited from Google's monopoly by agreeing not to compete with Google and by sharing the profits from Google's monopoly on search advertising.

189. By restricting competition in general search services, Google's and Apple's conduct has harmed users by reducing the quality of general search services, by lessening choice in general search services, and by impeding innovation. Google's anticompetitive acts have had harmful effects on both competition and consumers.

190. Absent Google's and Apple's exclusionary agreements and other conduct, dynamic competition for general search services would lead to higher quality search, increased user choice, and a more beneficial user experience. Finally, the incentives and abilities for companies to develop and distribute innovative search products would be restored, resulting in better products and more options for Plaintiffs and other users of internet search.

Second Claim for Relief

Conspiracy to Monopolize in Violation of Sherman Act § 2

(Defendants Google and Apple)

191. Plaintiffs incorporate the allegations of paragraphs 1 through 190 above and 203 - 268 below.

192. Defendants have specifically intended to enter into a combination to suppress and eliminate actual and potential competition in the search business and to fix high, arbitrary

prices.

193. The defendants' admission that "Our vision [is]. . . that we work as if we are one company" and that "you can actually merge without merging" and that "If we just sort of merged the two companies, we could just call them AppleGoo" and Apple's general counsel's own admission that their relationship was one of "co-opetition," together with their agreements to give Google preferential treatment on the Apple platforms and to make Google the default search engine on Apple's devices and to share profits with Apple all are in themselves evidence of defendants' specific intent to monopolize the market for search which has resulted in higher prices, lower quality and the suppression of actual and potential competitors, including DuckDuckGo, Yahoo!, and Bing.

194. Google controls 94% of the search market and all the actual and potential competitors have the remaining 6%.

195. Google and Apple have combined to monopolize the search business by agreeing that Apple would not compete with Google on search.

196. In furtherance of that agreement, Google agreed that it would share its profits with Apple, and Apple agreed to include Google as the only search engine on all of Apple's devices.

197. Google and Apple further agreed that the CEOs of each of the companies would meet secretly from time to time to confirm and enforce both the agreement and the means used to further the agreement.

198. As a combination in fulfillment of their vision, Apple and Google have the size and the economic power to fix prices and exclude competition, and in fact do so.

199. As they themselves admitted: "Our vision is that we work as if we are one company"; "you can actually merge without merging"; "If we just sort of merged the two companies, we could just call them AppleGoo". Apple's general counsel's own description of

their relationship was one of "co-opetition."

200. Google's and Apple's anticompetitive practices violate Section 2 of the Sherman Act, 15 U.S.C. § 2.

201. Google's and Apple's anticompetitive acts have had harmful effects on competition and users.

Third Claim for Relief

Attempt to Monopolize in Violation of Sherman Act § 2

(Defendant Google)

202. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 201 above and 216 - 268 below.

203. General search services in the United States is a relevant antitrust market and Google has monopoly power in that market.

204. Defendant Google has engaged in exclusionary, predatory and anticompetitive conduct with a specific intent to monopolize the internet search market and search advertising market. Defendant Google's conduct has harmed the competitive process and thereby has harmed the Plaintiffs who are consumers of Google's products. Specifically, Google has attempted unlawfully to acquire monopoly power through a set of exclusive contracts. These contracts require that Google be the pre-installed default search engine on the only pre-installed access point on computers and phones in exchange for a share of the advertising revenue generated by the searches run on Google. These agreements lock in Google as the default search engine for years at a time and prevent rivals from occupying default positions on a browser's search bar at the time of purchase. These agreements provide Google with an immediate, heightened advantage that is difficult to overcome.

205. According to Antonio Rangel, a behavioral economist at Caltech, the use of defaults is an effective tactic and a powerful influence on consumer decisions that would bias

a user toward choosing that search engine in a "sizeable and robust" way. Google has these contracts with web browser developers such as Apple and with telephone manufacturers such as Samsung and with wireless carriers. The fact that Google is the default search engine on these products constitutes the exclusionary and anticompetitive conduct that prevents rivals from competing in the relevant market.

206. Google's anticompetitive actions have created a dangerous probability that Google will achieve monopoly power in the internet search and search advertising markets because Google has already unlawfully achieved an economically significant degree of market power in that market and has effectively foreclosed new and potential entrants from entering the market or gaining their naturally competitive market shares. In 2020, Google's share of the U.S. general search services market was almost 90% and reached almost 94% on mobile devices. The market share of Google's next closest rival, Bing, was almost only 6%.

207. Defendant Google's use of exclusive default contracts and revenue sharing, coupled with its market share approaching 90% of the general search services market constitutes, together with its specific intent to monopolize the general search services market, as evidenced by its admissions that "Our vision [is]. . . that we work as if we are one company" and that "you can actually merge without merging" and that "If we just sort of merged the two companies, we could just call them AppleGoo" and Apple's general counsel's own admission that their relationship was one of "co-opetition," all constitute an attempt to monopolize in violation of Section 2 of the Sherman Act.

208. Monopolization of the general search services market necessarily translates to an advantage in search advertising. Google's attempted acquisition of monopoly power has reduced output and competition in the general search services market and has resulted in increased, supra-competitive prices for advertising and thus, harms competition generally.

209. Plaintiffs in this case are users and consumers of search who have been injured in fact by Google's attempted monopolization even though they do not pay to use Google. Consumers have been hurt in ways that cannot necessarily be quantified by price, since Plaintiffs who are consumers have been adversely affected by the lessened quality of their search results, as well as the Orwellian policies that Google has imposed upon them to extract their personal information. Google collects personal data from anyone who uses its services in order to target back advertisements to the users because that is how Google makes money. The reason Google is able to so aggressively collect the personal data of its users is because Google controls the search market and because, as a result, there few alternatives to Google if a consumer is concerned about privacy. According to Judge Mehta's recent memorandum opinion denying summary judgment to Google in the case of *United States v. Google,* 20-cv-3010, (D. D.C. Aug.4, 2023), as of September 2020, Google controlled nearly 94 percent of the mobile search engine U.S. market share and nearly 90 percent of the general search services market in the United States.

210. Google has in effect blotted out other companies that could provide the marketplace with products that would ultimately be better for Plaintiffs and for consumers in general. When there is fair competition on the merits, consumers will end up with more choice and better products. They end up paying less money for products because companies are incentivized to offer something better to consumers.

211. When a user searches on Google, Google keeps the information about the user's search forever. And Google trackers are everywhere. They track a user's cyber footsteps and collect information about the user's internet activity so that a search for a particular topic will produce tailored advertisements.

212. In addition to the annoyance of the experience, Plaintiffs and consumers are injured because they have been deprived of alternatives for search engines and have been

subjected to an inferior search experience. Plaintiffs are injured because Plaintiffs and consumers must relinquish their personal information to Google during their search. Google's service is not free; Plaintiffs and consumers pay for the Google search by trading personal data for the results of their search and by making themselves subject to targeted advertising that will follow them wherever they travel on the internet through Google.

213. Google monetizes personal data. Google extracts and collects information on the websites that consumers visit, using the information it collects about what consumers have searched for, and more. That information is then either used to produce ads that will follow the user or is sold to other companies to help them build a profile about the user's demographics. If the information that is collected is sold to another company, Google has monetized the user's search experience. If it were not for Google's monopoly, and if there were more competition for consumer searches, Google would be forced to pay the consumer for the money it collects upon monetizing the consumer's information. Ultimately, Plaintiffs and all consumers are injured in their business or property because Google does not pay for the information it collects from Plaintiffs. Plaintiffs are therefore owed compensation for the valuable personal information that is secretly extracted from them and resold.

214. Google's attempted monopolization of the general search advertising market violates Section 2 of the Sherman Act, and its anticompetitive practices are continuing and will continue unless they are permanently enjoined. Plaintiffs have suffered economic injury to their property as a direct and proximate result of Google's attempted monopolization of the general search services market, and Google is therefore liable for treble damages, costs, and attorneys' fees in amounts to be proved at trial.

Fourth Claim for Relief

Monopolization in Violation of Sherman Act § 2

(Defendant Google)

215. Plaintiffs reallege and incorporate paragraphs 1 through 214 above and 226 through 268 below as if set forth fully herein.

216. Google has willfully maintained and abused its monopoly power in general search services through anticompetitive and exclusionary distribution agreements that lock up the preset default positions for search access points on browsers, mobile devices, computers, and other devices; require preinstallation and prominent placement of Google's apps; and other restrictions that drive queries to Google at the expense of search rivals.

217. Google's exclusionary conduct has foreclosed a substantial share of the general search services market.

218. Google's anticompetitive acts have had harmful effects on competition and consumers.

219. The anticompetitive effects of Google's exclusionary agreements outweigh any procompetitive benefits in this market, or can be achieved through less restrictive means.

220. Google has acquired monopoly power in the general search services market through unlawful, willful acquisition and maintenance of that power. Specifically, Google has attempted unlawfully to acquire monopoly power through a set of exclusive contracts. These contracts require that Google be the pre-installed default search engine on the only pre-installed access point on computers and phones in exchange for a share of the advertising revenue generated by the searches run on Google. These agreements lock in Google as the default search engine for years at a time and prevent rivals from occupying default positions on a browser's search bar at the time of purchase.

221. Google's unlawful acquisition of monopoly power has reduced output and competition and resulted in its ability to control prices and exclude competition in the general search services market and search advertising market and, thus, harms competition generally in those markets.

222. Plaintiffs have been injured in fact by Google's unlawful monopolization because they have been deprived of their privacy without compensation and deprived of lower cost alternatives to Google that will not monetize Plaintiffs' information.

223. By restricting and monopolizing competition in the general search services market, Google's conduct has harmed Plaintiffs and consumers by reducing the quality of general search services in relation to privacy, data protection, and use of consumer data, by lessening choice in general search services, and by impeding innovation.

224. Google's unlawful monopolization of the general search services and search advertising markets violates Section 2 of the Sherman Act, and its unlawful monopolization practices are continuing and will continue unless they are permanently enjoined. Plaintiffs have suffered economic injury to their property as a direct and proximate result of Google's unlawful monopolization, and Google is therefore liable for treble damages, costs, and attorneys' fees in amounts to be proved at trial.

STATE VIOLATIONS

Fifth Claim for Relief

Violation of the California Cartwright Act

California Business and Professions Code § 16700, et seq.

(Defendants Apple and Google)

225. Plaintiffs incorporate and reallege each and every allegation set forth in the preceding paragraphs of this Complaint above, and incorporate and reallege paragraphs 232 through 268 below and further allege as follows:

226. Defendants Apple and Google and the individual defendants entered into an unlawful agreement in restraint of trade in violation of the California Cartwright Act, California Business and Professions Code, §§ 16700, et seq.

227. Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the intrastate trade and commerce as described above in violation of Section 16720, California Business and Professions Code. Each Defendant has acted in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, search advertising at anti-competitive levels.

228. The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, search advertising.

229. For the purpose of forming and effectuating the unlawful trust, Defendants and their co-conspirators have done those things which they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth above and the following: (1) fixing, raising, stabilizing, and pegging the rates for search advertising; and (2) allocating among themselves the market for search advertising.

230. The combination and conspiracy alleged herein has had, *inter alia*, the following effects: (1) price competition in the sale and marketing of search advertising has been restrained, suppressed, and/or eliminated in the State of California; (2) prices for search advertising sold by Defendant Google have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States; and (3) those who purchased search advertising from Google have been deprived of the benefit of free and open competition.

231. Plaintiffs have been damaged by Google's and Apple's anticompetitive acts and Google's and Apple's anticompetitive acts have had harmful effects on competition on Plaintiffs and on consumers.

Sixth Claim for Relief
Violation of California Unfair Competition Law
California Business and Professions Code § 17200, et seq.
(Defendants Apple and Google)

232. Plaintiffs bring the following state claim against Defendants to restore competition in the general search services market and to restore competition rather than combination as the rule of trade throughout California and indeed throughout the entire United States. Plaintiffs have suffered injury in fact and has lost money or property as a result of the unfair competition. By restricting competition in general search services, Google's and Apple's conduct has harmed the general public by reducing the quality of general search services in relation to privacy, data protection, and use of consumer data, by lessening choice in general search services, and by impeding innovation.

233. Plaintiffs incorporate by reference the allegations in the preceding paragraphs of this Complaint above and incorporates paragraphs 248 through 268 below.

234. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes in violation of California Business and Professions Code § 17200, et seq.

235. At all times relevant herein, and within the last four years, Defendant Google has marketed, sold, or distributed search advertising in California, and committed and continues to commit acts of unfair competition, as defined by Sections 17200, *et seq*. of the California Business and Professions Code, by engaging in the acts and practices specified above.

236. This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code to obtain restitution and disgorgement from Defendants Google LLC, Alphabet, Inc., XXVI Holdings, Inc., Apple, Inc., Tim Cook, Sundar Pichai, and Eric Schmidt, for acts, as alleged herein, that violated Section 17200, *et seq*. of the California Business and Professions Code, commonly known as the Unfair Competition Law (the "UCL").

237. Defendants' conduct as alleged herein violates the UCL. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of the UCL, including, but not limited to:

(1) violating Sections 1 and 2 of the Sherman Act and violating Section 16720, et seq., of the California Business and Professions Code, as set forth in the paragraphs above and as more particularly set out as follows:

a. Google has monopolized the general search services market in the United States.

b. Apple and Google agreed that Apple would not compete in the search and search advertising business in competition with Google.

c. In exchange for Apple's commitment not to compete in the search and search advertising business in competition with Google, Google agreed to share its profits from the search business with Apple and, in addition, to pay Apple extra billions of dollars. Google paid Apple to stay out of the search business.

d. Apple accepted the payments from Google and stayed out of the search and search advertising business.

e. Apple agreed to assist Google in building its search and search advertising business for their mutual benefit.

f. Apple agreed that Google would be the only search engine automatically included in all of Apple's devices.

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

h. Apple devices account for roughly 60 percent of mobile device usage in the United States.

i. Apple's Mac OS (operating system) accounts for approximately 25 percent of total computer usage in the United States.

j. As of September 2020, Google controlled 94 percent of the mobile search engine U.S. market share. As of September 2020, Google controlled 82 percent of the computer search engine U.S. market share.

k. By reason of the profit-sharing and the discriminatory treatment in favor of Google on its devices, Apple has contributed to Google's dominant position in the search market and in the search advertising market because the more money Google makes in search, the more money Apple makes as a share of Google's advertising revenue under the agreements.

l. The non-compete agreement, the profit-sharing agreement, and the out-of-the-box preference agreement remove any incentive on the part of Apple to compete against Google in the search business and in the search advertising business.

m. Apple is the major threat to Google as a potential competitor in the search business and in the search advertising business. But Apple has agreed with Google that it will not develop nor offer a general search engine in competition with Google.

n. Google and Apple made an agreement that Apple would not compete with Google in the search business and in the search advertising market. In exchange for that agreement, Google paid Apple billions of dollars; the Defendants engaged in profit-pooling of the advertising revenues from Google's search business; and Google was granted an exclusive position on Apple's platforms to increase the revenues that would be shared with Apple.

o. Google attempted to monopolize the general search services market. Defendant Google has engaged in exclusionary, predatory and anticompetitive conduct with a specific intent to monopolize the internet search market and search advertising market. Defendant Google's conduct has harmed the competitive process and thereby has harmed the Plaintiffs who are consumers of Google's products.

p. Google has acquired monopoly power in the general search services market through unlawful, willful acquisition and maintenance of that power. Specifically, Google has attempted unlawfully to acquire monopoly power through a set of exclusive contracts. These contracts require that Google be the pre-installed default search engine on the only pre-installed access point on computers and phones in exchange for a share of the advertising revenue generated by the searches run on Google. These agreements lock in Google as the default search engine for years at a time and prevent rivals from occupying default positions on a browser's search bar at the time of purchase

238. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, and in other paragraphs in this Complaint, whether or not in violation of Sections 1 and 2 of the Sherman Act, and whether or not in violation of Section 16720, *et seq*., of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent.

239. Defendants' acts or practices are unfair to consumers and purchasers of search advertising in California within the meaning of Section 17200 of the California Business and Professions Code.

240. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

241. Plaintiffs are entitled to full restitution for all overcharges and Defendants are required to disgorge to the public treasury all revenues, earnings, profits, compensation, and benefits that were obtained by Defendants as a result of such business acts or practices.

242. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

243. The unlawful and unfair business practices of Defendants have caused and continue to cause Plaintiffs to suffer injury in fact and Plaintiffs have lost money or property as a result of such unfair competition.

244. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition.

245. Plaintiffs for themselves and for the benefit of the public are accordingly entitled to equitable relief including restitution and disgorgement of all revenues, earnings, profits, compensation, and benefits that were obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204. Such remedies will incentivize innovation, new potential competition, new jobs, more companies, greater consumer choice, greater output and production, expansion of products, increase in demand, and investment opportunities, both in this business and in ancillary businesses that support this industry. Such remedies will serve to substantially increase demand and consumers will have more choices. Absent Google's and Apple's exclusionary agreements and other conduct, dynamic competition for general search services

and search advertising would lead to higher quality search, increased user choice, and a more beneficial user experience and lowered advertising costs. Finally, the incentives and abilities for companies to develop and distribute innovative search products would be restored, resulting in more options, better products, and higher consumer welfare overall.

246. Plaintiffs have alleged that the public relief being sought is sought for the benefit of the public as a whole because it is meant to remedy the collapse of competition in the search market and the search advertising market and to restore choice in the marketplace not only for Plaintiffs, but of all users of search.

247. Indeed, the public benefit is and has always been the history and focus of the antitrust laws. *Apex Hosiery Co. v. Leader, et al*., 310 U.S. 469, at p. 493 (1940) (redress of "public injury"); *Perma Life Mufflers v. International Parts Corp*., 392 U.S. 134, at p. 138 (1968) (serves "important public purposes"); *American Safety v McGuire*, 391 F.2d 821, at p. 826 (2dCir 1968) (plaintiff "likened to a private attorney-general who protects the public's interest"); *Zenith Radio Corp. v. Hazeltine Research,* 395 U.S. 100 at p. 131- 133 (1969) ("availability should be 'conditioned by the necessities of the public interest which Congress has sought to protect'" and "treble-damage cases, which are brought for private ends, but which also serve the public interest"); *United States v. TOPCO Associates, Inc*., 405 U.S. 596, at p. 621 (1972) ("the protection of the public welfare . . ." Dissent of Justice Burger); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614 (1985) at p. 6334-635 (" 'the plaintiff asserting his rights under the Act has been likened to a private attorney-general who protects the public's interest.' "); *Spectrum Sports, inc. v. McQuillan, et vir*, 506 U.S. 447 at p. 458 (1993) ("The [antitrust] law directs itself . . . against conduct which unfairly tends to destroy competition itself . . . not out of solicitude for private concerns but out of concern for the public interest.")

Seventh Claim for Relief

Violation of California Unfair Practices Act

California Business and Professions Code § 17000, et seq.

(Defendants Apple and Google)

248. Plaintiffs have suffered injury in fact and have lost money or property as a result of the Defendants' unfair practices. By restricting competition in general search services and by secretly paying Apple to be the default browser on Apple's devices and by secretly sharing revenue with Apple, Google's and Apple's conduct has harmed competition and the general public by reducing the quality of general search services in relation to privacy, data protection, and use of consumer data, by lessening choice in general search services, and by impeding innovation.

249. Plaintiffs incorporate by reference the allegations in the preceding paragraphs of this Complaint above, and incorporate paragraphs 263 through 268 below.

250. Defendants have engaged in unfair trade practices or unfair, unconscionable, deceptive or fraudulent acts or practices, including secret rebates to the injury of competition in violation of the state consumer protection and unfair competition and trade statutes in violation of California Business and Professions Code § 17000, 17045 et seq.

251. At all times relevant herein, and within the last four years, Defendant Google has marketed, sold, or distributed search advertising in California, and committed and continues to commit acts of unfair trade, as defined by Sections 17000, *et seq*. of the California Business and Professions Code, by engaging in the acts and practices specified above.

252. Defendants' conduct as alleged herein violates the UPA. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair trade practices by means of

unfair, unlawful, and/or fraudulent business acts or practices within the meaning of the UPA, including, but not limited to:

(1) violating Sections 1 and 2 of the Sherman Act and violating Section 16720, et seq., of the California Business and Professions Code, as set forth in the paragraphs above and as more particularly set out as follows:

a. Google has monopolized the general search services market in the United States.

b. Apple and Google agreed that Apple would not compete in the search and search advertising business in competition with Google.

c. In exchange for Apple's commitment not to compete in the search and search advertising business in competition with Google, Google agreed to share its profits from the search business with Apple and, in addition, to pay Apple extra billions of dollars. Google paid Apple to stay out of the search business.

d. Apple accepted the payments from Google and stayed out of the search and search advertising business.

e. Apple agreed to assist Google in building its search and search advertising business for their mutual benefit.

f. Apple agreed that Google would be the only search engine automatically included in all of Apple's devices.

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

h. Apple devices account for roughly 60 percent of mobile device usage in the United States.

i. Apple's Mac OS (operating system) accounts for approximately 25 percent of total computer usage in the United States.

j. As of September 2020, Google controlled 94 percent of the mobile search engine U.S. market share. As of September 2020, Google controlled 82 percent of the computer search engine U.S. market share.

k. By reason of the profit-sharing and the discriminatory treatment in favor of Google on its devices, Apple has contributed to Google's dominant position in the search market and in the search advertising market because the more money Google makes in search, the more money Apple makes as a share of Google's advertising revenue under the agreements.

l. The non-compete agreement, the profit-sharing agreement, and the out-of-the-box preference agreement remove any incentive on the part of Apple to compete against Google in the search business and in the search advertising business.

m. Apple is the major threat to Google as a potential competitor in the search business and in the search advertising business. But Apple has agreed with Google that it will not develop nor offer a general search engine in competition with Google.

n. Google and Apple made an agreement that Apple would not compete with Google in the search business and in the search advertising market. In exchange for that agreement, Google paid Apple billions of dollars; the Defendants engaged in profit-pooling and revenue-sharing of the advertising revenues from Google's search business; and Google was granted an exclusive position on Apple's platforms to increase the revenues that would be shared with Apple.

o. Google attempted to monopolize the general search services market. Defendant Google has engaged in exclusionary, predatory and anticompetitive conduct with a specific intent to monopolize the internet search market and search advertising market. Defendant Google's conduct has harmed the competitive process and thereby has harmed the Plaintiffs who are consumers of Google's products.

p. Google has acquired monopoly power in the general search services market through unlawful, willful acquisition and maintenance of that power. Specifically, Google has attempted unlawfully to acquire monopoly power through a set of exclusive contracts. These contracts require that Google be the pre-installed default search engine on the only pre-installed access point on computers and phones in exchange for a share of the advertising revenue generated by the searches run on Google. These agreements lock in Google as the default search engine for years at a time and prevent rivals from occupying default positions on a browser's search bar at the time of purchase

253. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, and in other paragraphs in this Complaint, whether or not in violation of Sections 1 and 2 of the Sherman Act, and whether or not in violation of Section 16720, *et seq*., of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent.

254. Defendants' acts or practices are unfair to consumers and purchasers of search advertising in California within the meaning of Section 17200 of the California Business and Professions Code.

255. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

256. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17000 of the California Business and Professions Code.

257. Plaintiffs are entitled to full restitution for all overcharges and Defendants are required to disgorge to the public treasury all revenues, earnings, profits, compensation, and benefits that were obtained by Defendants as a result of such business acts or practices.

258. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

259. The unlawful and unfair trade practices of Defendants have caused and continue to cause Plaintiffs to suffer injury in fact and Plaintiffs have lost money or property as a result of such unfair competition.

260. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition and unfair trade practices.

261. Plaintiffs for themselves and for the benefit of the public are accordingly entitled to equitable relief including restitution and disgorgement of all revenues, earnings, profits, compensation, and benefits that were obtained by Defendants as a result of such unfair trade and business practices, pursuant to the California Business and Professions Code, Sections 17000 et seq. Such remedies will incentivize innovation, new potential competition, new jobs, more companies, greater consumer choice, greater output and production, expansion of products, increase in demand, and investment opportunities, both in this business and in ancillary businesses that support this industry. Such remedies will serve to substantially increase demand and consumers will have more choices. Absent Google's and Apple's exclusionary agreements and other conduct, dynamic competition for general search services and search advertising would lead to higher quality search, increased user choice, and a more beneficial user experience and lowered advertising costs. Finally, the incentives and abilities for companies to develop and distribute innovative search products would be restored, resulting in more options, better products, and higher consumer welfare overall.

262. Plaintiffs have alleged that the public relief being sought is sought for the benefit of the public as a whole because it is meant to remedy the collapse of competition in the search market and the search advertising market and to restore choice in the marketplace not only for Plaintiffs, but of all users of search.

FRAUDULENT CONCEALMENT

263. As a result of the private and secret meetings by the CEOs of Google and Apple since at least 2005 until shortly before the filing of this complaint, Plaintiffs had no knowledge that Defendants were violating the antitrust laws as alleged herein and had no knowledge of facts that might have led to their discovery. Plaintiffs had no knowledge of the default agreements, revenue sharing agreements and agreements not to compete between Google and Apple. Moreover, the Defendants took affirmative steps to conceal their conspiracy in private and clandestine meetings between their CEOs.

264. Plaintiffs could not have discovered Defendants' violations at any time prior to this date by the exercise of due diligence because of the fraudulent and active concealment of the conspiracy by Defendants through various means and methods designed to avoid detection such as Defendants' executives' secret meetings and the fact that Defendants have not publicly revealed even today the terms of their revenue sharing agreements and their default agreements.

265. Defendants secretly conducted meetings and made agreements in furtherance of the conspiracy, confined such information concerning the conspiracy to key executives and engaged in conduct to obfuscate internal communications creating an estoppel to assert the statute of limitations. For example, Google has destroyed evidence of its practices. In an MDL proceeding in the Northern District of California, *In Re Google Play Store Antitrust Litigation*, Case No. 21-md-02981-JD, the Attorneys General of 38 states sought sanctions against Google for the destruction of evidence. The district court found that " . . . Google falsely assured the court . . that it had 'taken appropriate steps to preserve all evidence relevant to the issues reasonably evident in this action' . . . but evidence at the hearing plainly established that this representation was not truthful." (*Id*. at Dkt. No. 386, p. 16).

REQUEST FOR RELIEF

266. To remedy these illegal acts, Plaintiffs request that the Court:

a. Adjudge and decree that the alleged contract, combination and conspiracy between Google and Apple to divide the general search services market are illegal combinations and conspiracies in violation of Section 1 of the Sherman Act;

b. Adjudge and decree that the contract, combination and conspiracy between Google and Apple to share profits of the general search services market are illegal combinations and conspiracies in violation of Section 1 of the Sherman Act;

c. Adjudge and decree that the alleged contract, combination and conspiracy between Google and Apple to give preferential search position to Google in all Apple devices are illegal combinations and conspiracies in violation of Section 1 of the Sherman Act;

d. Adjudge and decree that the alleged contract, combination and conspiracy between Google and Apple to divide general search services market, to share profits of the search business, and to give preferential search position to Google in all Apple devices are, taken together, illegal combinations and conspiracies in violation of Section 1 of the Sherman Act;

e. Adjudge and decree that the alleged contract, combination and conspiracy between Google and Apple (1) that Apple not compete with Google in the general search services market; (2) that Apple and Google share the profits of Google's search business; (3) that Apple give Google preferential search position in all of Apple devices; and (4) that Google and Apple maintain control of 94% of the general search services market, with the power to fix prices and exclude competition, and in fact do so, are illegal combinations and conspiracies to monopolize in violation of Section 2 of the Sherman Act; and

f. Adjudge and decree that Google's attempted monopolization of the general search advertising market violates Section 2 of the Sherman Act, and its anticompetitive practices are permanently enjoined;

g. Adjudge and decree that Google's monopolization of the general search advertising market violates Section 2 of the Sherman Act, and its anticompetitive practices are permanently enjoined; and

f. Enter judgment in favor of Plaintiffs against Defendants and award Plaintiffs threefold the damages sustained by them according to law and award Plaintiffs their reasonable attorneys' fees and costs, and any pre-judgment and post-judgment interest as permitted by law.

267. In addition, Plaintiffs seek public injunctive relief prohibiting future unlawful acts for the benefit of the general public as a whole which is separate and apart from any private injunctive relief for the Plaintiffs themselves.

268. For the benefit of the general public as a whole, Plaintiffs request that the Court:

a. Require Google and Apple to disgorge the payments, plus interest from the first payment, made by Google to Apple in consideration of Apple's agreement not to compete against Google, that are being used to fund or promote the illegal conduct or that constitute capital available for that purpose, into a charitable trust to restore and provide education about competition for the benefit of the public as a whole, as may be approved by the Court.

b. Require Google and Apple to disgorge the payments, plus interest from the first payment, made by Google to Apple in consideration of Apple's agreement to provide exclusive out-of-the-box access to Google on Apple's devices that are being used to fund or promote the illegal conduct or that constitute capital available for that purpose, into a

charitable trust to restore and provide education about competition for the benefit of the public as a whole, as may be approved by the Court.

c. Require Google and Apple to disgorge the payments, plus interest from the first payment, made by Google to Apple in consideration of their agreement to pool or share profits, that are being used to fund or promote the illegal conduct or that constitute capital available for that purpose, into a charitable trust to restore and provide education about competition for the benefit of the public as a whole, as may be approved by the Court.

d. It is not sufficient that Google and Apple disgorge their payments and profits and dissolve their illegal agreement; rather, the law and this Court must, for the benefit of the public as a whole, effect a forward-looking divestiture of the anticompetitive structures that Google and Apple abused to commit their violations by dividing Google into separate and independent companies and by dividing Apple into separate and independent companies to re-establish competition in search in the future, just as was necessary to reestablish competition in *U.S. v. Standard Oil* when Standard Oil was divided by the Court into the following separate and independent companies: Standard Oil of Ohio, Standard Oil of Indiana, Standard Oil of New York, Standard Oil of New Jersey, Standard Oil of California, Standard Oil of Kentucky, Standard Oil of Iowa, Standard Oil of Minnesota, Standard Oil of Illinois, Standard Oil of Kansas, Standard Oil of Missouri, Standard Oil of Nebraska, Standard Oil of Louisiana—a.k.a Exxon, Mobile, Chevron, Amoco, Sohio, Conoco *et cetera.*

e. Enter any other public injunctive relief necessary and appropriate for the benefit of the public as a whole to restore competitive conditions in the future in the markets affected by Google and Apple's unlawful conduct.

f. Enter any other public injunctive relief for the future that the Court may find just and proper for the benefit of the public as a whole.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as its right under the Seventh Amendment to the Constitution of the United States or as given by statute. Fed. R. Civ. P. 38.

DATED: September 18, 2023

By: /s/ Joseph M. Alioto

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